NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 21

November 6, 1989 Indexed 21 N.J.R. 3331-3584

(Includes adopted rules filed through October 16, 1989)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 21, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 18, 1989

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline **3332**

AGRICULTURE
Tuberculin testing of cattle ..... 3333(a)
BANKING
Revolving credit equity loans ..... 3333(b)
Bookkeeping and accounting by savings and loan associations ..... 3336(a)
PERSONNEL
State service: intermittent titles; Vacancy Review Board .... 3337(a)
Layoffs ..... 3340(a)
COMMUNITY AFFAIRS
Uniform Fire Code; Fire Code Enforcement; High Level Alarms ..... 3344(a)
Exemptions from local property taxation ..... 3345(a)
Uniform Construction Code: underground storage tank compliance ..... 3345(b)
UCC: plumbing subcode ..... 3346(a)
UCC enforcing agencies: standardized forms; remittance of training fees ..... 3346(b)
Dedication of fee revenue for UCC enforcement ..... 3348(a)
Landlord registration form for one and two-unit rental dwellings ..... 3349(a)
Housing and Mortgage Finance Agency: debarment from agency contracting ..... 3350(a)
Housing and Mortgage Finance Agency: nonpublic records ..... 3351(a)
EDUCATION
Evaluation of building principals in State-operated districts ..... 3352(a)
ENVIRONMENTAL PROTECTION
Radon laboratory certification program ..... 3354(a)
Volatile organic substances in architectural coatings and air fresheners ..... 3360(a)
Particle accelerators for industrial and research use ..... 3364(a)
Certification of radon testers and mitigators ..... 3369(a)
Pinelands Comprehensive Management Plan ..... 3381(a)
HEALTH
Adult day health care facilities: standards for licensure ..... 3385(a)
Adult day health care facilities: physical plant and functional requirements ..... 3403(a)
Acute renal dialysis services: physical plant requirements .. 3406(a)
HIGHER EDUCATION
Garden State Scholarships: academic requirements ..... 3408(a)
CORRECTIONS
Inmate restitution for damaged or destroyed property ..... 3408(b)
Administrative segregation ..... 3409(a)
Employee visits with incarcerated relatives ..... 3410(a)
Release of confidential inmate or parolee records ..... 3411(a)
Adult county correctional facilities: public hearing ..... 3411(b)
Parole Board rules ..... 3411(c)
INSURANCE
Foreign and alien property and casualty insurers: appeals regarding admission denials ..... 3418(a)
Use of credit cards to pay premiums ..... 3418(b)
Personal lines policy form standards ..... 3421(a)
Private passenger automobile coverage: rate filing review procedures ..... 3422(a)
Individual health insurance rate filings ..... 3428(a)
Commercial insurance: rating plans for individual risk premium modification ..... 3430(a)
Commercial lines policy forms: extension of comment period ..... 3422(a)
LAW AND PUBLIC SAFETY
Motor Vehicles: Unsatisfied Claim and Judgment Fund rules ..... 3432(a)
Provisional licensure as audiologist or speech-language pathologist ..... 3433(a)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **December 6, 1989.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

RULEMAKING IN THIS ISSUE—Continued

Home improvement contracts: written requirement ..... 3433(b)
State Police: boat safety course ..... 3434(a)
TRANSPORTATION
Public utility rearrangement agreements ..... 3435(a)
Left turns on U.S. 46 in Mount Olive ..... 3437(a)
Construction services: receipt of bids ..... 3437(b)
TREASURY-GENERAL
Common Pension Fund D: administrative correction and extension of comment period ..... 3438(a)
Debarment from State public works contracting: extension of comment period ..... 3439(a)
Consultant selection procedures for State project assignments: extension of comment period ..... 3438(b)
Affirmative action in public contracts ..... 3439(b)
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
District zoning ..... 3441(a)
Zoning change in North Arlington and Lyndhurst ..... 3445(a)
CASINO CONTROL COMMISSION
Casino organization ..... 3446(a)
Minibaccarat table layout ..... 3446(b)
Blackjack surrender rule ..... 3447(a)

RULE ADOPTIONS

BANKING
Check cashing business standards: administrative correction to N.J.A.C. 3:24-1.2 ..... 3448(a)
PERSONNEL
State and local service ..... 3448(b)
Compensation; promotional examinations; eligible lists; sick leave; information ..... 3451(a)
COMMUNITY AFFAIRS
Uniform Fire Code inspection, safety and enforcement provisions ..... 3453(a)
Utility load management devices: installation programs .... 3458(a)
Uniform Construction Code: educational facility use group ..... 3460(a)
UCC: assumption of local enforcement powers ..... 3460(b)
EDUCATION
Tenure charges against persons within Human Services, Corrections and Education ..... 3461(a)
Library network services ..... 3462(a)
ENVIRONMENTAL PROTECTION
Worker and Community Right to Know ..... 3478(a)
Worker and Community Right to Know: administrative correction to N.J.A.C. 7:1G-3.2 ..... 3482(a)
Natural Areas System: West Pine Plains ..... 3482(b)
Freshwater wetlands preliminary municipal approvals exemption: notice of rule invalidation ..... 3482(c)
Freshwater wetlands transition area exemption: notice of rule invalidation ..... 3482(d)
1990-1991 Fish Code ..... 3483(a)
Volatile organic substances in consumer products ..... 3488(a)
HEALTH
Catastrophic Illness in Children Relief Fund Program ..... 3501(a)
Residential alcoholism treatment facilities: rate setting and reimbursement ..... 3505(a)
Home health agency services ..... 3506(a)
Adult closed acute psychiatric beds: certification of need .. 3509(a)
Child and adolescent acute psychiatric beds: need formula ..... 3514(a)
Worker and Community Right to Know Act rules ..... 3516(a)
INSURANCE
Long-term care insurance ..... 3465(a)
LABOR
Unemployment Compensation and State Plan Temporary Disability: 1990 rates ..... 3535(a)
Vocational rehabilitation services: vehicle modification requirements ..... 3535(b)
Workers' Compensation: 1990 maximum rates ..... 3545(a)
LAW AND PUBLIC SAFETY
Hearing aid dispensers: continuing education ..... 3474(a)
State Board of mortuary science ..... 3474(b)
Practice of optometry: unlawful advertising ..... 3475(a)
Rental or use of premises for bingo games ..... 3475(b)
Horse racing: admittance of children to race track ..... 3475(c)
Harness racing: admittance of children to race track ..... 3476(a)
TRANSPORTATION
Drawbridge operations; reimbursed highway safety lighting ..... 3476(b)
TREASURY-GENERAL/COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT
Purchase Bureau rules; small business and urban development enterprises; minority and female subcontractors ..... 3545(b)

(Continued on page 3584)

NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

Material published in the New Jersey Register is the property of the State of New Jersey. However, it may be copied, reproduced or republished by any person for any purpose whatsoever without permission, providing that no such reproduction or republication shall bear the title "New Jersey Register" or "Official Rules Publication" without the written permission of the Director, Office of Administrative Law.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $90 ($180 by First Class Mail); back issues when available, $10 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 42-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to five volumes depending on the Department coverage desired.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Disease Control Program
Tuberculosis Control and Eradication
Proposed Repeal and New Rule: N.J.A.C. 2:2-3.3

Authorized By: State Board of Agriculture and Arthur R. Brown, Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:5-18 through 4:5-75.
Proposal Number: PRN 1989-567.

Submit comments by December 6, 1989 to:
Dr. Sidney R. Nusbaum, Director
Division of Animal Health
N.J. Department of Agriculture
CN-330
Trenton, New Jersey 08625
Telephone: (609) 292-3965

The agency proposal follows:

Summary

In the past, Bovine Tuberculosis was a serious problem to humans and cattle. Beginning at the turn of the century coherent Statewide, and later nationwide, programs were undertaken to deal with this disease. Over the past 10 years, a high level of surveillance has not detected any infection in New Jersey and almost none in the United States. The principal tool for this disease control effort was the routine tuberculosis test. Now examination of cattle at slaughter houses and tracebacks is accepted as the most significant tool of detection.

This proposed new rule eliminates regularly scheduled testing every five years. The mandated tests are performed for free at present. These scheduled tests would be replaced with special testing only when traceback or other epidemiological studies indicate testing is necessary to delineate the health status of the herd. The current rule directly affects cattle dealers and owners who are now required to test dairy herds every five years. The new rule changes the requirement to conform to the import/export requirements of N.J.A.C. 2:3 and the rules of other states which require all cattle, not just dairy cattle, to be tested.

Social Impact

The social impact of the proposed new rule is beneficial to the import and export of animals to and from New Jersey. It will eliminate a mandated test, which in the opinion of the Division of Animal Health, is of little value. There should be savings of time, effort and consequently money, on the part of the cattle owner and dealer, despite the costs of testing being paid by the owner in a small number of cases.

Economic Impact

The proposed new rule has little general economic impact. In some instances it would require cattle owners who wish to have their herds tested yearly for sale, required by other states, to have additional tests performed at their own expense. Approximately 30 dairy herds ship their milk directly to Pennsylvania, where a five-year tuberculosis test is required. These herds would be required to test at five-year intervals to continue to ship milk to Pennsylvania. The Department does not feel this would be a significant cost to their overall operation. The adoption of the program will reduce the costs to the Division of Animal Health and the State of New Jersey.

Regulatory Flexibility Analysis

The Department believes all dairy and other cattle operations in the State are small businesses under the definition of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Despite the rule dealing with the health and welfare of the population of the state, the Department feels the circumstances surrounding the removal of the regulation will benefit the majority of those cattle operations by the removal of the mandated testing requirement. However, should the disease recur, the Department would be forced to reconsider returning to standardized testing.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated with brackets [thus]):

2:2-3.3 Times established for tuberculin tests

(a) [All dairy herds producing milk for sale shall be tuberculin tested every five years.] **Cattle shall be required to undergo tuberculin testing whenever the Secretary of Agriculture has determined, by traceback or other epidemiological studies, that testing is necessary to delineate the health status of the herd.**

(b) [No tuberculin test shall be conducted within 60 days of a prior test, except when the cervical test is used by a State or Federal veterinarian.] **Testing shall be performed according to procedures under Title 9, Code of Federal Regulations, Part 77.1.**

1. Copies are filed and may be received by writing to:
Director, Division of Animal Health
New Jersey Department of Agriculture
CN-330
Trenton, New Jersey 08625

BANKING

(b)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Revolving Credit Equity Loans
Proposed Amendments: N.J.A.C. 3:1-14.1 through 14.6
Proposed New Rules: N.J.A.C. 3:1-14.7 and 14.8
Proposed Repeal: N.J.A.C. 3:18-3.5

Authorized By: Mary Little Parell, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:9A-24, 24b and 25.2; 17:11A-44.8; 17:12B-48(21) and 155.
Proposal Number: PRN 1989-558.

Submit written comments by December 6, 1989 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend and add new rules to the revolving credit equity rules found at N.J.A.C. 3:1-14. The general purpose of these proposed amendments and new rules is to revise the conditions which may attach to revolving credit equity loan agreements between borrowers and the financial institutions which are authorized to offer such loan products. These institutions include banks, savings banks and savings and loan associations, secondary mortgage loan licensees and credit unions. In addition, the proposed amendments and new rules make it clear that stock in a cooperative apartment is acceptable as security for revolving credit equity loans.

The Department first proposed amending these rules on September 8, 1987. (see 19 N.J.R. 1594(a)). That proposal received substantial comment from both consumer groups and representatives of licensed institutions. The Department has made substantial changes in the proposal to address many of the concerns raised in those comments.

These proposed amendments and new rules authorize secondary mortgage licensees to make home equity loans like other licensed lenders. During the public debate on Assembly Bill No. 2857, which was the legislative effort to revise the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., various consumer groups expressed concerns that secondary mortgage loan licensees not be permitted to make home equity loans under the same rules as are applicable to banks, savings banks and savings and loan associations. They contended that certain aspects of these rules when applied to secondary loans could place borrowers in serious danger of losing their homes. There was concern about the casual

use of home equity loan advances, the provision which required the crediting of borrowers' payments "no later than the next business day after receipt" and the permission given lenders to change the interest rate at any time and without limitation.

The Department shares these concerns, particularly in view of the burgeoning popularity of these types of loans in today's lending environment. The popularity of these types of loans has dramatically increased because of Federal tax reform. Balancing these concerns is the Department's belief that consumers are best served through increased competition among lenders offering comparable products. That is why the Department supported Assembly Bill No. 2857 and that is also why the Department now proposes to amend these rules.

The 1987 proposal included a provision prohibiting the use of a credit card as a means by which borrowers could obtain advances against their home equity credit lines. This proposal was intended to discourage the casual use of this form of credit which, it should be noted, results in a mortgage being taken by the lender on the borrower's home and therefore places the home at risk.

There were many comments to that proposal indicating that this prohibition against credit card access would put State-chartered institutions at a competitive disadvantage when compared with Federally-chartered institutions. Also, it would limit consumers' options to borrow. To address these concerns while still discouraging the casual use of a secured credit line, the proposed amendments permit credit card access, but prohibit advances in amounts of less than $500.00.

The proposed amendments would also prohibit lenders from unilaterally changing the interest rate applicable to such loan agreements except as dictated by the movement of a market interest rate index specified in the agreement, which agreement shall be readily verifiable by the borrower and beyond the control of the lender. This provision mirrors a similar requirement contained in the Federal Home Equity Loan Consumer Protection Act of 1988. However, since the coverage of these rules is broader than Truth in Lending, 15 U.S.C. §1601 et seq., and includes loans secured by other than the borrower's principal dwelling, the Department deems it necessary to also include that requirement here.

The proposed amendments also permit the lender to change an interest rate, which is based on an index, only at periodic intervals and not immediately upon every change in the index. Accordingly, if the index changes twice in a month, the institution may change the interest only once at the end of the period.

To protect borrowers from institutions unilaterally increasing the minimum payment, the proposed amendments require (1) notice to the borrower of the change at least 15 days before it is effective and (2) agreement by the borrower to the change or a further draw against the account after the effective date. This extends the protections afforded by Regulation Z, 12 C.F.R. §226.9(c).

The 1987 proposal required that payments be credited on the date of receipt, rather than on the next business day after the date of receipt. Many institutions commented on the problems associated with same-day crediting of payments received late in the day or at remote offices. Regulation Z also requires crediting on the date of receipt, but allows the lender to set reasonable requirements for the consumer to follow in making payments (see 12 C.F.R. §226.10). For example, the lender could set a cut-off hour for payment to be received, or could specify one address for receiving payments. In response to these comments, the proposed amendments require crediting on the date of receipt, but permit lenders the flexibility to set requirements for payment as outlined in Regulation Z.

Proposed new rule N.J.A.C. 31:14.7 states the charges which lenders may impose incident to a revolving credit equity loan. So that secondary mortgage lenders have parity with other lenders making these loans, they are authorized to collect an application fee at closing to reimburse them for administrative expenses. Other allowable charges include third party charges, and late payment and check collection charges, which are also authorized in the Secondary Mortgage Loan Act. Proposed new rule N.J.A.C. 3:1-14.8 sets forth the operative date for the amended rules at 60 days after adoptive publication, and that the rules are operative prospectively.

To avoid confusion, N.J.A.C. 3:18-3.5, which regulated the third party charges a secondary mortgage lender could collect under a prior version of the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., is proposed for repeal. The third party charges collectable by a secondary mortgage lender are currently set forth in N.J.S.A. 17:11A-44.9. These fees are authorized only if they are actually paid by the licensee to a third party and are collectable only at closing.

Social Impact

The proposed amendments and rules apply to all lenders authorized by N.J.A.C. 3:1-14 to make revolving credit equity loans. The proposed amendments and rules will have the beneficial impact of protecting borrowers who utilize this form of credit.

Economic Impact

The proposed amendments and new rules are generally expected not to have a substantial economic impact upon lending institutions which offer this form of credit, since the proposed amendments and rules merely restrict terms and conditions which may be contained in future loan agreements. Program changes necessitated by the amendments may produce some impact upon lenders. Consumers are expected to receive the economic benefit of many of the changes, including the requirement for same-day crediting of payments. In addition, permitting secondary lenders to make revolving loans will increase competition in this product area thereby encouraging lenders to offer more attractive loans to consumers.

There will be no economic impact upon the Department.

Regulatory Flexibility Analysis

Licensed lenders are predominantly small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and the proposed amendments and rules impose compliance requirements in the area of business conduct and disclosure. These institutions may need professional services to meet these requirements. However, since the objective of adding limited consumer protections to revolving credit equity loan agreements can only be met by imposing the compliance requirements upon all institutions, differentiation is not made for small businesses.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]):

SUBCHAPTER 14. REVOLVING CREDIT EQUITY LOANS

3:1-14.1 Authorization

A bank, savings bank or savings and loan association, **a secondary mortgage loan licensee as defined in N.J.S.A. 17:11B-1, or a credit union as defined in N.J.S.A. 17:13-26, hereinafter collectively referred to as the "lender",** shall have authority to make loans secured by a lien on real estate which shall be known as a "Revolving Credit Equity Loan" and may charge, contract for and receive thereon interest at a rate or rates agreed to by the [bank, savings bank or savings and loan association] **lender** and the borrower. **For purposes of this subchapter, stock in a cooperative shall be considered real estate.**

3:1-14.2 Revolving credit equity loan agreement

(a) A revolving credit equity loan shall be made pursuant to an agreement between the [bank, savings bank or savings and loan association] **lender** and the borrower whereby:

1. The [bank, savings bank or savings and loan association] **lender** may permit the borrower to obtain advances of money from the [bank, savings bank or savings and loan association] **lender** from time to time or the [bank, savings bank or savings and loan association] **lender** may advance money on behalf of the borrower from time to time as directed by the borrower, **except that advances of less than $500.00 are not authorized.**

2.-4. (No change.)

3:1-14.3 Terms of agreement

(a) If an agreement governing a revolving credit equity loan so provides:

1. The [bank, savings bank or savings and loan association] **lender** may at any time or from time to time change the terms of the agreement, including the terms governing the periodic interest rate, the calculation of interest, or the method of computing the required amount of periodic installment payments, provided, however, that:

i. The [the] periodic interest rate shall not be changed more than once in each billing cycle; [nor shall the]

ii. The minimum installment **shall not** be less than 1/240 of the outstanding principal balance due plus interest accrued at the end of the billing cycle; [.]

iii. Any change in the periodic interest rate shall correspond to the movement of the market interest rate index specified in the agreement,

which index shall be readily verifiable by the borrower and beyond the control of the lender. The borrower's written consent shall be required to change the index so specified to a different index and such consent shall not be effective unless the lender has plainly disclosed to the borrower in writing the reasons for the change and the effects such a change will have upon the borrower's account. If the index currently being used is no longer available, the lender may change the index and margin without consent of the borrower, provided that the new index is readily verifiable by the borrower and beyond the control of the lender and provided further that the substitute index and margin will result in a substantially similar interest rate;

iv. The relationship between the index and the periodic percentage rate may be expressed in terms of a formula which may provide for changes at specific dates or times and upon incremental movement of the index so that each change in the index does not necessarily result in a change in the applicable rate. The lender may vary the rate so long as it does not exceed the rate derived from the formula; and

v. The lender shall not change the method of computing the minimum periodic installment payment unless:

(1) At least 30 days prior to the effective date of the change, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the change and states that the incurrence by the borrower or another person authorized by him of any further indebtedness on or after the effective date of the change stated in such notice shall constitute acceptance of the change; and

(2) Either the borrower agrees in writing to the change or the borrower or another person authorized by him incurs such further indebtedness on or after the effective date of the change stated in such notice. This subsection shall not affect the lender's rights upon default.

2. The [bank, savings bank or savings and loan association] **lender** may apply any changes made pursuant to (a)1 above to all then outstanding unpaid indebtedness in the borrower's account including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change of the periodic interest rates or required minimum periodic installment.

3:1-14.4 Notification of changes

[(a)] The [bank, savings bank or savings and loan association] **lender** shall notify each affected borrower of any change in terms in the manner set forth in the agreement governing the plan and in compliance with the requirements of the Truth in Lending Act and regulations promulgated thereunder, as in effect from time to time. [if applicable; provide, however, that if such change has the effect of increasing the interest rate or other charges to be paid by the borrower, the bank, savings bank or savings and loan association shall mail or deliver to the borrower at least 15 days before the effective date of the change a clear and conspicuous written notice which shall describe the change and the existing term or terms of the agreement affected by the change and shall also set forth the effective date and an explanation, if necessary, of the change.

(b) No notice of a change is required under (a) above if a change in interest rate is made under a properly disclosed variable rate plan that ties the interest rate change to an index or formula.]

3:1-14.5 Interest

No interest shall be paid, deducted or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances, except that interest due but unpaid may be considered part of the unpaid principal balance. For purposes of computing interest [all installment payments shall be applied no later than the next business day after the date of receipt at the designated office or offices of the bank, savings bank or savings and loan association as set forth in the agreement], **installment payments shall be credited on the date of receipt in accordance with the provisions of Truth in Lending, 15 U.S.C. §1601 et seq., and Regulation Z as amended from time to time concerning the crediting of payments in open end credit transactions. Interest** [interest] shall be charged for the actual number of days elapsed at a daily rate of 1/365th of the yearly rate.

3:1-14.6 Methods of computing interest

(a) Interest may be computed in each billing cycle by any of the following methods, in accordance with the agreement between the [bank, savings bank or savings and loan association] **lender** and the borrower.

1.-3. (No change.)

(b) For all the methods of computation in a[1-3]**1 through 3** above, the billing cycle shall be monthly (except that a month may vary from 27 to 35 days) and the unpaid principal balance on any day shall be determined by addition to any balance paid as of the beginning of that day all advances, past due interest and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

3:1-14.7 Fees chargeable

(a) A lender may charge a borrower only the following fees incident to a revolving credit equity loan:

1. An application fee, defined as any fee imposed by the lender for accepting or processing a mortgage loan application. The application fee shall be collectable only at closing and shall not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Third party charges actually incurred by a lender on behalf of a borrower incident to the processing of a mortgage loan application or the closing of the loan. Third party charges are collectable only at closing. No third party charges may be collected except the following:

i. Fees for title examination, abstract of title, survey or title insurance;

ii. Appraisal fees;

iii. Credit report fees;

iv. Recording fees; and

v. Reasonable attorney fees paid to an attorney authorized to practice law in New Jersey, if otherwise not prohibited;

3. Charges for late payment by the borrower as may be provided in the note or loan agreement, provided that no late charge shall exceed five percent of the amount of payment in default. No more than one late charge shall be assessed on any one payment in arrears; and

4. Check collection charges in the amount charged to the lender.

(b) Nothing contained in this section shall limit a lender's ability to impose charges upon foreclosure.

3:1-14.8 Operative date

The amendments to this subchapter shall become operative 60 days following the publication of their adoption in the New Jersey Register, and shall be operative at that time only with regard to agreements entered into on or after the operative date.

[3:18-3.5 Loans not consummated

(a) If a secondary mortgage loan transaction is not consummated because the licensee refuses to proceed, except as provided in subsection (b) of this Section, the licensee shall return any fees received from the borrower except that the licensee shall be reimbursed for any expenses incurred up to the maximum set out in Section 22 of the Act, but in no event shall the total fees reimbursed exceed $50.00.

(b) If a secondary mortgage loan transaction is not consummated because the borrower refuses to proceed or has given false information, the licensee shall be reimbursed for all expenses incurred, not to exceed those set forth in Section 22 of the Act.

(c) If for any reason a secondary mortgage loan transaction is not consummated, a licensee shall return all documents executed by or belonging to the borrower.]

(a)

DIVISION OF SAVINGS AND LOAN

Bookkeeping and Accounting

Proposed Readoption with Amendments: N.J.A.C. 3:28

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1; 17:12B-197.

Proposal Number: PRN 1989-581.

Submit written comments by December 6, 1989 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Banking proposes to readopt the rules at N.J.A.C. 3:28 governing the bookkeeping methods and practices of savings and loan associations. These rules are scheduled to expire on December 17, 1989 pursuant to Executive Order No. 66(1978).

Subchapter 1 sets forth the general requirements for bookkeeping and the posting of ledger accounts, while subchapter 2 sets standards for the cash disbursement record and requires that bank accounts be reconciled at least monthly. Subchapter 3 concerns the cash book journal, the general journal and the general ledger. In subchapter 4, the recordkeeping requirements for members accounts are set forth. Finally, in subchapter 5, the procedure for electing loss deferral accounting is set forth.

The Department has reviewed these rules and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated.

The proposed amendments, in general, constitute technical changes in the rules to bring them into accord with current acceptable accounting practices. Most significantly, the amendments permit associations to keep many of the required records on a computerized system. In addition, the amendments require that ledgers be balanced on a monthly, not a quarterly, basis.

Social Impact

The rules proposed for readoption apply to all State-chartered associations. They impose reasonable requirements on associations to ensure that adequate records are maintained for examination by the Department.

Economic Impact

The rules proposed for readoption merely require that the association maintain basic records and subscribe to accepted bookkeeping practices. The amendments, in general, merely codify existing practice. Accordingly, it is not anticipated that they will have any economic impact.

Regulatory Flexibility Analysis

The rules proposed for readoption place compliance requirements on savings and loan associations, many of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As these compliance requirements are intended to facilitate examinations, which are necessary to ensure that associations meet regulatory standards, no differentiation on the basis of business size is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:28.

Full text of the proposed amendments to the readoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:28-1.1 Bookkeeping system

Books **and records of account** shall be kept on [a double entry system] **an accrual basis** of accounting.

3:28-1.2 [Members' payments] **Loan payments or deposits**

[Members'] **Loan** payments or deposits shall be [recorded] **made** on payment slips [or] **and recorded** in a daily [receiving cash book] **cash receipt record, whether manually maintained or through a computerized system**, which shall contain the [members'] **customers'** names and account numbers, [date] **dates** of payments and other information necessary to give proper credit. The record of cash receipts shall be balanced and proved promptly. **Provision should be made to account for electronic fund transfers.**

3:28-1.3 Prompt posting of ledger accounts

[Members'] **Loan** payments or deposits shall be posted to their individual **subsidiary** ledger accounts promptly.

3:28-1.4 Cash receipts record

A summary of the totals of the [members'] **loan** payments or deposits posted in the subsidiary ledger shall be entered in the record of cash receipts at least [monthly] **weekly**.

3:28-1.5 Real estate

A subsidiary ledger account shall be kept for each parcel of real estate **owned whether held for development/investment or acquired through repossession.**

3:28-1.6 Real estate income and expense

Income and expense shall be recorded in a [subsidiary] **general** ledger account maintained for each parcel of real estate **owned or acquired.**

3:28-1.7 [Specific reserve] **Reserve for uncollected interest**

(a) Each association shall maintain a specific reserve for uncollected interest equivalent to all earned, uncollected interest in default more than 90 days. Suitable provision for this reserve shall be made at least [quarterly] **monthly**.

(b) The requirements of this section shall not apply to loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration.

3:28-3.1 Cash book journal

[If a] **A** cash book journal [is used] **may be maintained either manually or through a computer system.** [entries] **Entries** shall be recorded by use of both gross and net columns, thereby indicating actual net cash transactions.

3:28-3.2 General journal

If a cash book journal is not used, a **computerized or manually maintained** general journal shall be maintained.

3:28-3.4 General ledger

A general ledger shall be maintained [which] **either manually or on a computerized system. The general ledger** shall be posted and balanced as frequently as circumstances require, but at least [semiannually] **monthly**. Accounts in the general ledger shall be segregated in groups under asset accounts, liability and reserve accounts, income accounts and expense accounts. All closing entries shall be posted to the general ledger.

SUBCHAPTER 4. [MEMBERS' ACCOUNTS] **SUBSIDIARY LEDGERS**

3:28-4.1 [Members'] **Borrowers' and depositors'** subsidiary ledgers

A subsidiary ledger account shall be maintained for each [member's] **borrower's or depositor's** account except for accounts maintained under the provisions of [Section 130 of the Savings and Loan Act (1963)] **N.J.S.A. 17:12B-130.**

[3:28-4.2 Serial shares

On serial shares, arrears and advances shall be extended at least quarterly.

3:28-4.3 Shareholders' ledger

The shareholders' ledger shall be proved and balanced at least quarterly.]

3:28-4.2 Depositor ledger

The depositor ledger shall be proved and balanced at least monthly.

3:28-4.3 (Reserved)

3:28-4.4 Subsidiary ledgers for mortgages

A subsidiary record shall be maintained for each mortgage loan which shall be balanced and proved at least [quarterly] **monthly**.

3:28-4.5 [Members'] **Depositors'** passbooks or other evidence of accounts

[Members' passbooks] **Passbooks** or other evidence of accounts should contain an understandable record which will permit satisfactory reply to verification requests. Each entry should be initialed by or contain the symbol of the person making same. Where passbooks are posted by machine, each teller shall have a separate symbol.

3:28-4.6 Taxes and insurance

(a) If amounts advanced by the association for taxes and insurance are not charged directly to the mortgage loan accounts, they shall be entered in a subsidiary record maintained for this purpose which shall be balanced and proved at least [quarterly] **monthly**.

(b) If advance payments by borrowers for taxes and insurance are not credited directly to the mortgage loan accounts, they shall be entered in a subsidiary record maintained for this purpose which shall be balanced and proved at least [quarterly] **monthly**.

3:28-4.7 [Share loans or account] **Account** loans

A subsidiary record shall be maintained for each [share loan or] account loan which shall be balanced and proved at least [quarterly] **monthly**.

3:28-4.8 Real estate contracts

A subsidiary ledger account shall be maintained for each parcel of real estate sold on contract, which account shall be balanced and proved at least [quarterly] **monthly**. The accounts shall be kept on a basis which will permit application of charges and credits in accordance with the terms of the contracts.

3:28-4.9 Signature cards

Each association shall maintain a complete signature file of [members] **depositors**, as well as a record of their names, addresses and account numbers.

3:28-4.10 Account numbers

[All members' account] **Accounts** shall be identified by a certificate number, account number, or both.

3:28-4.11 Other subsidiary records

All other subsidiary records not specifically mentioned above shall be balanced and proved at least [quarterly] **monthly**.

3:28-5.1 Procedure for election of loss deferral accounting

(a)-(b) (No change.)

(c) The amortization of discounts and losses shall be matched as follows:

1. For purposes of this subsection (c) only:

i. The term "long-term, deep-discount security" means any loan, lease or security identified in (a) above that has a remaining term of maturity, at the time of purchase, of [ten] **10** years or more, and is purchased at a price of less than 90 percent of its stated (par) value or principal balance.

ii. The term "matching loss" is an amount determined by multiplying:

(1) [the] **The** net amount of loss deferred in accordance with an election made pursuant to (a) above during a period beginning six months prior to the purchase of a long-term, deep-discount security, and ending six months after the date of such purchase, by

(2) [a] **A** fraction (not to exceed one), the numerator of which is the total of amounts paid or other consideration given for long-term, deep-discount securities during the [twelve] **12**-month period described in (a) above, and the denominator of which is the total proceeds (in cash or any other consideration) from dispositions during the same period for which the election under (a) above is in effect.

2. When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to (a) above, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss[: Provided,], **provided** that:

i.-ii. (No change.)

3. (No change.)

(d)-(e) (No change.)

(f) It is intended that this rule parallel for [state] **State**-chartered mutual savings and loan associations and mutual savings banks those regulations adopted by the Federal Home Loan Bank Board for [federal] **Federal** savings and loan associations and savings banks**, or other appropriate Federal authority,** so that any interpretation of these regulations shall refer to comments and interpretation of those [federal] **Federal** regulations unless otherwise determined by the [commissioner] **Commissioner**.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Intermittent Titles; Vacancy Review Board

Proposed Amendments: N.J.A.C. 4A:3-3.8, 4A:6-1.2, 1.3, 1.9 and 2.4

Proposed New Rule: N.J.A.C. 4A:4-1.11 and Appendix

Authorized By: Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:3-1, 11A:3-7 and 11A:6, and Executive Order No. 10 (1982).

Proposal Number: PRN 1989-592.

A **public hearing** concerning the proposed amendments and new rule will be held on:

Tuesday, November 21, 1989 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, N.J.

Please contact the Legislation/Rules Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by December 6, 1989 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, N.J. 08625

The agency proposal follows:

Summary

Departmental review of salary administration memoranda (SAMs) revealed that some SAMs contain material which more appropriately belongs in rule form. One of those SAMs concerns the Vacancy Review Board, an entity created by Executive Order No. 10 (1982); the other, leaves and holiday pay for employees in intermittent titles in State service.

A new rule is proposed to implement Executive Order No. 10, which will be accompanied by an Appendix that will reproduce the Executive Order and inter-agency procedures concerning vacancy reviews. The proposed rule, N.J.A.C. 4A:4-1.11, would provide that the Vacancy Review Board (Board) in the Department of Personnel must review all positions in State service from which employees retire, unless a position is exempted from review by the Board or is abolished by the appointing authority. Upon review, the Board determines whether the position should be refilled in its current classification, abolished, transferred or refilled at a lower classification.

The inter-agency procedures described in the Appendix would list the information to be supplied by the appointing authority to the Department of Personnel and the forms which the appointing authority must complete. The procedures would also describe the manner in which the vacancy review is to be conducted.

Proposed amendments to N.J.A.C. 4A:3-3.8, the current rule on intermittent employees in State service, would include a chart on the vacation, sick and administrative leave entitlements of intermittent employees. The proposed amendment to N.J.A.C. 4A:6-2.4 would add a new subsection (b) to provide for the calculation of holiday pay for intermittent employees. Two options are provided. Under the first option, holiday pay would be calculated at the end of each bi-weekly period. Under the second option, holiday pay would be calculated at the end of each calendar quarter, as currently set forth in SAM 15-87. Finally, N.J.A.C. 4A:6-1.2

(vacation leave), 1.3 (sick leave) and 1.9 (administrative leave) would be amended to provide a cross-reference for intermittent employees to the new chart on leave entitlements to be added to N.J.A.C. 4A:3-3.8.

Social Impact

The proposed new rule and amendments would not alter existing practice with respect to the review of positions in State service vacated upon retirement, nor with respect to leave entitlements for intermittent employees in State service. However, State personnel office staff who work with Vacancy Review Board procedures would benefit by having better access to these procedures. Intermittent employees in State service and employee representatives would also benefit from easy access to leave information and holiday pay provisions in the rules.

Economic Impact

As noted above, existing practice concerning Vacancy Review Board procedures, and leave entitlements and holiday pay for intermittent employees in State service, would remain the same, so the proposed amendments and new rule should not result in an economic impact.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed rule and amendments would have no effect upon small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules regulate employment in the public sector.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated with brackets [thus]):

4A:3-3.8 Intermittent titles: State service

(a)-(d) (No change.)

(e) [See N.J.A.C. 4A:6-1.2(d), 4A:6-1.3(b) and 4A:6-1.9(c) for] **The following chart indicates the amount of** vacation, sick and administrative leave [provisions applicable] to **which** intermittent employees **are entitled based on accumulated hours of work.** See N.J.A.C. 4A:6-2.4[a](**b**) for holiday pay.

LEAVE ENTITLEMENTS—INTERMITTENT EMPLOYEES

VACATION LEAVE

Workweek	Employees with up to 10,440 hours of service (equivalent of 5 years)	After 10,440 hours of service (equivalent of 5 years)	After 25,056 hours of service (equivalent of 12 years)	After 41,760 hours of service (equivalent of 20 years)
40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.	1 day (8 hours) for each 104 hours in regular pay status.	1 day (8 hours) for each 84 hours in regular pay status.
Workweek	Employees with up to 9,135 hours of service (equivalent of 5 years)	After 9,135 hours of service (equivalent of 5 years)	After 21,924 hours of service (equivalent of 12 years)	After 36,540 hours of service (equivalent of 20 years)
NL, NE, 35 and 3E hour titles	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.	1 day (7 hours) for each 93 hours in regular pay status.	1 day (7 hours) for each 73 hours in regular pay status.

SICK LEAVE

Workweek	Through Dec. 31 of First Calendar Year of Employment	After Dec. 31 of First Calendar Year of Employment
40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.
NL, NE 35 and 3E hour titles	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.

ADMINISTRATIVE LEAVE

Workweek	
40, 4E and N4 hour titles	½ day (4 hours) for each 174 hours in regular pay status to a maximum of 3 days (24 hours) in any calendar year.
NL, NE, 35 and 3E hour titles	½ day (3½ hours) for each 152 hours in regular pay status to a maximum of 3 days (21 hours) in any calendar year.

4A:6-1.2 Vacation leave

(a)-(c) (No change.)

(d) Part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. [State employees in intermittent titles shall be entitled to paid vacation leave based on accumulated hours of work as set by the Commissioner] **See N.J.A.C. 4A:3-3.8(e) for paid vacation leave to which State employees in intermittent titles are entitled.**

(e)-(h) (No change.)

4A:6-1.3 Sick leave

(a) (No change.)

(b) Part-time and 10-month employees shall be entitled to a proportionate amount of paid sick leave. [State employees in intermittent titles shall be entitled to paid sick leave based on accumulated hours of work as set by the Commissioner] **See N.J.A.C. 4A:3-3.8(e) for paid sick leave to which State employees in intermittent titles are entitled.**

(c)-(h) (No change.)

4A:6-1.9 Administrative leave: State service

(a)-(b) (No change.)

(c) Part-time employees shall be entitled to a proportionate amount of paid administrative leave. [Employees in intermittent titles shall be entitled to paid administrative leave based on accumulated hours of work as set by the Commissioner] **See N.J.A.C. 4A:3-3.8(e) for paid administrative leave to which employees in intermittent titles are entitled.**

(d)-(f) (No change.)

OPTION A

4A:6-2.4 Holidays: State service

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.

(b) Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as [determined by the Commissioner] **follows:**

1. Holiday pay shall be paid at the end of a bi-weekly pay period and shall be calculated by dividing the number of hours the employee was in regular pay status in that pay period by the number of hours which a full-time employee would work during that pay period, and then multiplying that amount by the number of holiday hours for that pay period.

2. An intermittent employee who has resigned, been removed or been laid off prior to the last day of the pay period shall not receive holiday pay for that pay period.

Recodify (b)-(c) as (c)-(d) (No change in text.)

OPTION B

4A:6-2.4 Holidays: State service

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.

(b) Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as [determined by the Commissioner] **follows:**

1. Holiday pay shall be paid at the end of a calendar quarter and shall be calculated by dividing the number of hours the employee was in regular pay status in that calendar quarter by the number of hours which a full-time employee would work during that quarter, and then multiplying that amount by the number of holiday hours for that quarter.

2. An intermittent employee who has resigned, been removed or been laid off prior to the last day of the calendar quarter shall not receive holiday pay for that quarter.

Recodify (b)-(c) as (c)-(d) (No change in text.)

4A:4-1.11 Vacancy Review Board: State service

(a) The Vacancy Review Board in the Department of Personnel, established by Executive Order No. 10 (1982), shall review all positions from which employees retire, except as provided in (b) below, and determine which of the following actions shall be taken by the affected appointing authority with respect to each position:

1. Refilling the position in its present classification;

2. Abolishing and creating a new position in a different classification;

3. Transferring the position to a different unit;

4. Abolishing the position with funds lapsing to the General Treasury; or

5. Taking another appropriate measure.

(b) The Vacancy Review Board need not make the determination required by (a) above if the position is exempted from review by the Vacancy Review Board or the affected appointing authority abolishes the position.

(c) See Appendix to this rule for Executive Order No. 10 (1982) and Vacancy Review Board procedures.

APPENDIX TO N.J.A.C. 4A:4-1.11

EXECUTIVE ORDER No. 10

Whereas, There are positions in State government that become vacant through retirement each year; and

Whereas, Such vacancies should be reviewed to consider their continued need and proper classification; and

Whereas, Procedures should be established to effectuate such a review process;

Now, Therefore, I, Thomas H. Kean, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby ORDER and DIRECT:

1. A Vacancy Review Board is hereby established to review the duties of and continued need for positions in the Executive Branch of State government that become vacant upon retirement, to determine whether these positions should be eliminated, continued, reclassified or transferred. The Board shall establish procedures necessary to implement this process. All departments of the Executive Branch shall fully cooperate with and provide information and documentation as required to the Board.

2. The Vacancy Review Board shall consist of the State Treasurer, President of the Civil Service Commission and a representative of the Governor's Office or their designees.

3. The Vacancy Review Board shall be located in the Department of Civil Service and that Department shall provide necessary personnel and assistance to the Board.

4. This Order shall take effect immediately.

Issued July 13, 1982.

Vacancy Review Board Procedures

(a) When an appointing authority receives notice of an employee's impending retirement, it shall submit documentation to the Administrator, Office of Personnel Management Systems (OPMS), Department of Personnel, which states the effective date of the retirement and whether or not the appointing authority is requesting retention of the position, unless the provisions of N.J.A.C. 4A:4-1.11(b) apply. The following information shall also be submitted:

1. A completed DPF-487;

2. A completed DPF-44, which must contain a thorough description of the position's duties;

3. A completed DPF-510, indicating the retiring employee's most recent PAR;

4. A detailed organizational chart of the unit in which the position is located, including all position numbers in the unit; and

5. A statement of justification for retention or change in the classification of the position.

(b) OPMS will maintain records of all positions that have become vacant by an employee's retirement.

(c) OPMS will review the material submitted and, if necessary, conduct an audit of the position.

(d) Following this review, OPMS will make a recommendation to the Vacancy Review Board as to the course of action to be taken on the vacancy.

(e) The Board may defer a decision on the vacancy if a reorganization is pending or underway in the appointing authority, in which case the position shall remain vacant.

(f) Within 30 working days of the vacation of a position by an employee's retirement, or within 30 working days of receipt by OPMS of the appointing authority's materials concerning the vacancy, whichever occurs later, the Board will determine that the appointing authority may take one of the actions permitted in N.J.A.C. 4A:4-1.11(a).

(g) The Board will advise OPMS of its determination, and OPMS will notify the appointing authority.

(h) The Board will report annually to the Governor. The report will include the results of its review of vacated positions, and include resultant cost savings.

(i) At the request of the Governor, or on its own initiative, the Board may direct the study of any vacant position in order to determine its disposition.

(a)

MERIT SYSTEM BOARD

Layoffs

Reproposed New Rules: N.J.A.C. 4A:8

Reproposed Repeals: N.J.A.C. 4:1-16.1 through 4:1-16.6, 4:1-24.2; 4:2-16.1, 4:2-16.2; 4:3-16.1, 4:3-16.2

Authorized By: Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:4-7, 11A:4-9, 11A:4-12, 11A:8-1 through 11A:8-4.

Proposal Number: PRN 1989-593.

A **public hearing** on proposed new rules N.J.A.C. 4A:8, Layoffs, will be held on:

Wednesday, November 29, 1989 at 6:00 P.M.
Rutgers Labor Education Center
Auditorium
Clifton Avenue and Ryders Lane
New Brunswick, New Jersey

Please contact the Legislation/Rules Unit at 609-984-0118 if you wish to be included on the list of speakers.

Submit written comments by December 6, 1989 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In response to the adoption of N.J.S.A. 11A:1-1 et seq. (the Civil Service Act), the entire Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy. In this proposal, N.J.A.C. 4:1-16.1 through 4:1-16.6, 4:2-16.1, 4:2-16.2, 4:3-16.1 and 4:3-16.2 concerning rules on layoffs are proposed for repeal and N.J.A.C. 4A:8 proposed in their place.

The Merit System Board previously published proposed rules on layoffs in the August 3, 1987 New Jersey Register (see 19 N.J.R. 1363(a)). However, the comments submitted in written form and in testimony at the public hearings contained many valid criticisms as well as helpful suggestions for changes. Therefore, the Board decided to withdraw the previous proposal (see 20 N.J.R. 1980(b)) and published for comment a new proposal on December 5, 1988 (see 20 N.J.R. 2955(b)). Once again, testimony presented at the public hearing and written comments showed the need for further changes, particularly on the issues of alternatives to layoffs, pre-layoff actions, and layoff units. Accordingly, the Board is withdrawing the pending proposal and publishing for comment a revised version of these rules.

Proposed subchapter 1 replaces existing rules concerning basic layoff procedures. This subchapter pertains to both State agencies and political subdivisions subject to Title 11A and is intended to make these procedures as similar and comprehensible as possible.

N.J.A.C. 4A:8-1.1 is an explanation of the division of responsibility concerning layoff authority. This rule clarifies that while the decision to institute layoff procedures rests with an individual appointing authority, it is the responsibility of the Department of Personnel to determine the rights of all affected career service employees and to have such information provided to affected parties.

N.J.A.C. 4A:8-1.2 is a new rule based upon an important innovation in the reform legislation at N.J.S.A. 11A:8-3, concerning alternatives to layoffs. Two options have been proposed this time: under the first option, both State and local appointing authorities are urged to lessen the possibility of layoffs by considering voluntary alternatives; under the second option, State appointing authorities are required to offer and implement, as appropriate, such alternatives. Under both options, employee participation is voluntary and would not otherwise affect employee rights under this chapter. Further, prior to implementation, appointing authorities are required to submit for approval to the Department of Personnel a plan for alternatives to layoff.

N.J.A.C. 4A:8-1.3 lists a number of pre-layoff measures for appointing authorities to take, as appropriate, to lessen the possibility, extent or impact of layoffs. Assistance in implementing these measures may be provided by the Department of Personnel upon request.

N.J.A.C. 4:8-1.4 describes the role of the Department of Personnel in reviewing appointing authority actions prior to the issuance of layoff notices to employees. The rule provides a listing of information which must be provided to the Department of Personnel at least 30 days prior to the issuance of layoff practices. The rule also describes the remedial action the Department of Personnel may take if such information is not timely provided, and contains strict controls on the filling of vacant positions.

N.J.A.C. 4A:8-1.5 defines the unit of government in which layoffs, and the resulting displacement of employees, are to be confined. In State service, the new proposed rule provides that a department or autonomous agency is the layoff unit under all circumstances. In local service, a unit consisting of more than one department could be approved. This rule sets out a procedure for the approval of such larger units in local service as well as a comprehensive list of factors which are to be considered. The new rule also provides clarifying language for the determination by the Commissioner of Personnel of job locations in State service.

N.J.A.C. 4A:8-1.6 is reflective of statutory requirements for notice to employees provided in the new Title 11A. Proposed subsection (d) effectuates the new provision at N.J.S.A. 11A:8-1 which, in an effort to avoid stale notices, established that a layoff shall not take place more than 120 days after initial service of the layoff notice without a showing of good cause for an extension. This proposed rule also explains procedures to be followed when the effective date of a layoff is extended. Finally, this proposed rule provides that affected employees receive a subsequent written notice as to their specific employment status resulting from the layoff action, including a statement of appeal rights.

Subchapter 2 defines the types of layoff rights accorded affected employees and explains the exercise of such rights in both State and local service. N.J.A.C. 4A:8-2.1 explains the three types of rights of employees affected by a layoff action: lateral title rights, demotional title rights and special re-employment rights. The rule also specifies that, in local service, a special reemployment list from one governmental jurisdiction will not be certified to another jurisdiction.

N.J.A.C. 4A:8-2.2 concerns the manner in which lateral and demotional rights are to be exercised within the layoff unit. This proposed rule provides that, after displacement of provisional and probationary employees, these rights are to be exercised against the permanent employees with the least seniority at the job location. The new rule clarifies the manner in which State employees would indicate job location preferences. Changes have also been made with regard to the order of displacement of provisional employees. Two options are offered regarding rights to a previously held permanent title. Under the first option, in both State and local service, lateral and demotional rights may be exercised against vacant positions or positions filled by provisional employees. Special reemployment rights are also given to a previously held lateral or demotional title. Under the second option, the current rule which applies only to State service, only demotional rights are extended to any previously held permanent title, and only where the employee has greater continuous service.

N.J.A.C. 4A:8-2.3 explains the manner in which special reemployment rights are to be exercised, and emphasizes that the exercise of special reemployment rights is not confined to a layoff unit. The new rule provides greater detail on the special reemployment rights provided to those displaced by location.

The last three rules are essentially unchanged from the prior proposal. N.J.A.C. 4A:8-2.4 provides, in one rule, a clear definition of "seniority" as it is used in the determination of layoff rights. This rule also provided a method for determining the breaking of a tie when two or more affected employees have equal seniority. N.J.A.C. 4A:8-2.5 contains certain limitations on reassignments during the 12-month period begining with the service of the layoff notice. Finally, N.J.A.C. 4A:8-2.6 contains, in one rule, a summary of procedures to be followed when an affected employee wishes to appeal either the "good faith" issue of a layoff action or the determination of individual layoff rights.

Social Impact

The proposed new rules emphasize measures to avoid layoffs when possible, and to reduce the extent and impact of layoffs when reductions in force are necessary. In particular, a number of voluntary alternatives to layoff are listed which would, in some situations, result in eliminating the need for layoffs. Moreover, these rules require appointing authorities

to implement appropriate preventive steps prior to making reductions in force. Review by the Department of Personnel is provided to ensure maximum efforts have been made to avoid or reduce the layoff of permanent employees.

The proposed rules will have an overall positive social impact upon users of the merit system rules in lessening the need for layoffs, reducing disruption during the layoff process, and preserving extensive employee rights.

Economic Impact

The proposed new rules, by emphasizing alternatives to layoffs, would have a positive economic impact on those employees who could otherwise lose their jobs. The rules also recognize that while public employers may be forced to make changes based upon budgetary restrictions, the flexibility afforded by alternatives and pre-layoff measures would allow some agencies to maintain their work force and avoid disruption of public service. The clarity and organization of this rule chapter, in comparison to the current rules in Title 4, along with the features designed to avoid disruption, will reduce the amount of inquiries and controversies requiring agency action. Therefore, the overall economic impact of these rules will be positive.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rules will have no effect upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules regulate employment in the public sector.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-16.1 through 4:1-16.6, 4:1-24.2, 4:2-16.1, 4:2-16.2, 4:3-16.1, and 4:3-16.2.

Full text of the proposal follows:

CHAPTER 8
LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority and designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

OPTION A

4A:8-1.2 Alternatives to layoff

(a) Appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(b) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority:

2. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

3. Providing employees with optional temporary demotional title changes; and

4. Other appropriate actions to avoid a layoff.

(c) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(d) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(e) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employee's right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

OPTION B

4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority:

2. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

3. Providing employees with optional temporary demotional title changes; and

4. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employee's right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;

2. Separating non-permanent employees;

3. Returning provisional employees to their permanent titles;

4. Reassigning employees; and

5. Assisting potentially affected employees in securing transfers or other employment.

(b) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

(c) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

(d) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by taking pre-layoff actions which first place employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;

2. The projected effective date of layoff;

3. Sample copies of the layoff notice and the projected date for issuance;

4. Any seniority listings maintained including records of preferred seniority maintained by the appointing authority pursuant to N.J.A.C. 4A:8-2.4(b)2;

5. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;

6. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;

7. A summary of alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable; and

8. A summary of consultations with affected negotiations representatives.

(b) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received an unsatisfactory or equivalent rating in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)6 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;
2. Providing needed assistance to the appointing authority;
3. Directing implementation of appropriate alternative or prelayoff measures; or
4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency.

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.
2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.
3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.
4. Thereafter, the Commissiner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

i. The need for a unit larger than a department;
ii. The functional and organizational structure of the local jursidiction;
iii. The number of employees, funding source and job titles in the proposed unit;
iv. The effect upon employee layoff rights; and
v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency. Job locations may consist of named facilities or geographical areas. The Commissioner of Personnel shall assign a job location for every facility within a department or autonomous agency. In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice either personally or by certified mail. If service is by certified mail, the 45 days shall be counted from the date of mailing. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and
2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially comparable duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially related duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to

the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Affected negotiations representatives shall be permitted to be present at any meeting with individual employees where layoff rights are discussed.

(e) See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

4A:8-2.2 Exercise of lateral and demotional rights

(a) In State service, a permanent employee in a position affected by a layoff action shall be provided title rights to job locations selected by the employee within the department or autonomous authority. The employee shall select individual job locations in preferential order from the list of job locations determined by the Commissioner of Personnel (see N.J.A.C. 4A:8-1.5(c)) and indicate:

1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(b) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be determined based on the level of the permanent title held and seniority in title;

4. The position held by the employee serving in a working test period with the least probationary time;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was an unsatisfactory or equivalent rating;

6. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4(a)).

(d) Employees serving in their working test periods shall be provided lateral title rights in the same order as (c)1 through 4 above.

(e) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, employees whose most recent (within the last 12 months) performance rating in their permanent title was an unsatisfactory or equivalent rating shall have lateral title rights only against vacant positions to be filled or against employees without permanent status.

OPTION A

(f) An employee shall be provided with lateral or demotional rights to a previously held permanent title providing that the employee held the title within current continuous service. Such rights shall be exercised only against vacant positions or positions filled by provisional employees. In addition, the employee will be entitled to special reemployment rights to his or her previously held lateral or demotional title.

OPTION B

(f) In State service, demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis, but in such cases, displacement may be made only on the basis of greater permanent continuous service.

(g) In State service, employees in intermittent titles shall have lateral and demotional rights only to intermittent titles.

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location, with the following limitations:

1. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where the original job location no longer exists, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

2. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where the original job location no longer exists, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over transfers and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) A special reemployment list shall not have an expiration date. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with a lower class code (State service) or lower level (local service).

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees in intermittent titles shall have special reemployment rights only to intermittent titles and only within the department or autonomous authority in which the layoff occurred.

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. Seniority shall be based on total calendar years, months and days in title regardless of work week, work year or part-time status; however, seniority for State employees in intermittent titles shall be calculated on the basis of hours in regular pay status.

(b) Preferred seniority, which means greater seniority than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred seniority.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred seniority. Records of preferred seniority shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred seniority, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(c) The following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(e) An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes.

(f) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(g) If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system, must have been approved by the Department of Personnel;

3. The employee with the greater seniority in the title before a break in service shall have priority;

4. The employee with greater continuous permanent service, regardless of title, shall have priority;

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. Other factors as may be determined by the Commissioner.

4A:8-2.5 Reassignments

For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be reassigned, except as permitted by the Commissioner for good cause.

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Merit System Board (see N.J.A.C. 4A:2-2.9 et seq.); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code; Fire Code Enforcement; High Level Alarms

Proposed Readoption: N.J.A.C. 5:18, 5:18A and 5:18B

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198, 201 and 219.

Proposal Number: PRN 1989-574.

Submit comments by December 6, 1989 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules concerning the Uniform Fire Code, Fire Code Enforcement, and High Level Alarms, N.J.A.C. 5:18, 5:18A and 5:18B respectively, are scheduled to expire on February 1, 1990. The Department has reviewed these rules and finds that they continue to be necessary for the orderly enforcement of the Uniform Fire Safety Act, P.L. 1983, c. 383 (N.J.S.A. 52:27D-192 et seq.) and of P.L. 1984, c. 31 (N.J.S.A. 52:27D-214 et seq.). Such amendments as the Department, together with the Fire Safety Commission, considers to be appropriate were proposed on August 21, 1989 at 21 N.J.R. 2431(a).

N.J.A.C. 5:18, the Uniform Fire Code, includes the Fire Prevention Code and the Fire Safety Code, as life hazard use and permit classifications and various other administrative provisions. N.J.S.A. 5:18A, Fire Code Enforcement, contains rules for the establishment, organization, and administration of local, county and State enforcing agencies. It also includes rules concerning fire officials. N.J.S.A. 5:18B contains requirements for high level alarm systems intended to give warning of any danger of overflow of above-ground storage tanks holding flammable liquid.

Social Impact

Failure to readopt these rules would jeopardize fire safety in New Jersey by eliminating the standards under which fire inspections are conducted and the administrative rules under which enforcing agencies are organized. The existence of these standards and rules is mandated by the Uniform Fire Safety Act and the supplementary legislation concerning high level alarms.

Economic Impact

Property owners must have a way of knowing with a reasonable degree of certainty what is required of them in order to have their property be fire-safe. The existence of uniform standards allows both local fire officials and property owners to know what must be done in each case. Failure to readopt would temporarily relieve owners of the obligation to comply with current standards, but would eliminate the predictability that results from continuity. Furthermore, failure to readopt the rules would most likely reduce the level of fire safety enforcement in the State, with consequent increase in loss of life and property due to fire.

Regulatory Flexibility Analysis

The rules proposed for readoption are necessary for public safety. Fire safety violations must be corrected regardless of whether the person or entity responsible is a "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:18, 5:18A and 5:18B.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Exemptions from Taxation

Proposed Readoption: N.J.A.C. 5:22

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 54:4-3.79 and 3.123.
Proposal Number: PRN 1989-553.

Submit written comments by December 6, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules concerning tax exemptions and abatements for improvements to certain residential properties, N.J.A.C. 5:22, are scheduled to expire on December 1, 1989. The Department has reviewed these rules and finds that they continue to be necessary for the orderly administration of the municipal tax exemption and abatement programs authorized by P.L. 1975, c. 104 and P.L. 1979, c. 233.

Under P.L. 1975, c. 104 (N.J.S.A. 54:4-3.72 et seq.), as implemented by subchapter 1 of N.J.A.C. 5:22, owners of certain one- and two-family houses, in municipalities that have been found by their county planning boards to have areas in need of rehabilitation, may have $4,000, $10,000 or $15,000 worth of improvements to their houses, as may be determined by ordinance, exempt from local property taxation for a period of five years. The ordinance may also provide for the abatement of pre-existing taxes. P.L. 1979, c. 233 (N.J.S.A. 54:4-3.121 et seq.), as implemented by subchapter 2 of N.J.A.C. 5:22, authorizes municipalities to allow exemptions and abatements for improvements to multiple dwellings (buildings with three or more dwelling units) and for conversion of nonresidential buildings into multiple dwellings.

To the Department's knowledge, 125 municipalities have, to date, sought and been granted authorization from their county planning boards to allow exemptions and abatements under P.L. 1975, c. 104. No county planning board approval is required under P.L. 1979, c. 233.

Social Impact

Failure to readopt these rules would remove guidelines that are needed by assessors, municipal governing bodies and county planning boards and tax boards for the uniform implementation of P.L. 1975, c. 104 and P.L. 1979, c. 233. This would cause serious difficulty for all involved, government officials and taxpayers alike.

Economic Impact

Failure to readopt these rules would introduce uncertainties into the process of applying for and granting exemptions and abatements under P.L. 1975, c. 104 and P.L. 1979, c. 233. This might result in the denial of claims that the rules would allow or allowance of claims that would otherwise be disallowed, with consequent disadvantage either for applicants or for their municipalities.

Regulatory Flexibility Analysis

These rules affect owners of rental properties that are "small businesses", as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in the same way that they affect other owners of such businesses. The tax exemption statutes that these rules implement do not contemplate any differential treatment of owners that happen to be small businesses.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:22.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Underground Storage Tanks; Definitions

Proposed Amendment: N.J.A.C. 5:23-1.4

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124, 58:10A-25.
Proposal Number: PRN 1989-572.

Submit comments by December 6, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 58:10A-25e requires the Department of Community Affairs to "adopt in the State Uniform Construction Code" the rules and regulations adopted by the Department of Environmental Protection under the New Jersey Underground Storage of Hazardous Substances Act, P.L. 1986, c. 102. The Department proposes to incorporate these rules into the code by specifically referencing them among the "prior approvals" required, where relevant, before a construction permit may be issued.

The proposed amendment also includes deletion of language excluding public school buildings from the definitions of "building" and "structure." These exclusions were deleted from the State Uniform Construction Code Act by P.L. 1983, c. 496.

Social Impact

The proposed amendment will eliminate potential sources of confusion by bringing rule definitions into conformity with those in the statute and by making it clear to users of the Uniform Construction Code regulations that compliance with the underground storage tank rules is a precondition to the issuance of construction permits and certificates of occupancy.

Economic Impact

There will be no economic impact since the underground storage tank rules are already in effect by authority of the Department of Environmental Protection and the exclusion of public school buildings from the definitions of "building" and "structure" is already inoperative by reason of statutory change.

Regulatory Flexibility Statement

The clarification provided by this proposed amendment will have no differential impact upon small businesses, as it clarifies this rule in regard to other regulatory and statutory provisions in effect.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Building" means[, exclusive of a public school facility,] a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing, shelter, enclosure and support of individuals, animals or property of any kind. When used herein, "building" and "structure" shall be interchangeable except where the context clearly indicates otherwise.

. . .

"Prior approvals" means the necessary certifications or approvals of any Federal or State agency, or any political subdivision of the State, which are not inconsistent with this chapter, and which are conditions precedent to the issuance of a construction permit or a

certificate of occupancy, which shall include, but [is] not **be** limited to, the following:

1. Zoning;
2. Soil erosion and sediment control;
3. Highway curb cuts;
4. Water and sewer service extension permits; [and]
5. Coastal area facilities review; **and**
6. **Compliance of underground storage tank systems with N.J.A.C. 7:14B.**

. . .

"Structure" means[, exclusive of a public school facility,] a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of [as] **a** parcel of land; provided, the [work] **word** "structure" shall be construed when used herein as though followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning.

. . .

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Plumbing Subcode
Proposed Amendment: N.J.A.C. 5:23-3.15

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-123b, 124.
Proposal Number: PRN 1989-573.

Submit comments by December 6, 1989, to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

Section 5 of the State Uniform Construction Code Act, N.J.S.A. 52:27D-123, provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." However, it is necessary, when revisions or amendments are made to model codes, for the Department to amend the appropriate sections of N.J.A.C. 5:23 so that cross-references will be correct. Accordingly, the Department proposes this rule amendment in order to enable code enforcement officials, builders, and property owners to use the 1989 Supplement to the National Standard Plumbing Code.

The 1987 National Standard Plumbing Code has been adopted by reference as the plumbing subcode of the State Uniform Construction Code. The National Association of Plumbing and Heating Contractors, which sponsors the national code, engages in a public code change process and issues supplements between succeeding editions of the code. This enables the code to respond to rapidly changing plumbing technology. Modifications made to the supplements by the proposed amendments relate to the administration and enforcement procedures of the State Uniform Construction Code and do not alter the technical, substantive provisions of the national model code.

Social Impact

Adoption of the appropriate references to the plumbing subcode supplement will allow users of the State Uniform Construction Code to avoid confusion about what code provisions are in effect and to benefit from the most recent technical innovations upon which they are based.

Economic Impact

These substantive technical changes which have become effective by operation of law may decrease construction costs in some instances and increase them in others. Correct cross-referencing, to the extent that it results in diminished uncertainty as to what is required, may be expected to reduce the likelihood of work being done in reliance upon obsolete provisions which would then have to be corrected at greater expense.

Regulatory Flexibility Statement

Because this proposed amendment, made to ensure that the State Uniform Construction Code remains consistent, merely reflects changes at the national level supplementing the National Standard Plumbing Code, there is no identifiable differential impact on small businesses. All businesses, regardless of size, are subject to the plumbing subcode and must remain so in order to maintain uniform construction standards throughout the State.

Full text of the proposal follows (additions indicated in boldface thus):

5:23-3.15 Plumbing subcode

(a)-(c) (No change.)

(d) The 1989 Supplement to the 1987 National Standard Plumbing Code is adopted with the following amendments:

1. Chapter 2 of the Plumbing Subcode, entitled "General Regulations", is amended as follows:

i. Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a), and to insert the number "Twenty-four" in the blank space under item (b). Under item (c), delete the words "section 3.12.1" and substitute in lieu thereof, the words "N.J.A.C. 5:23-2.9".

2. Chapter 7 of the Plumbing Subcode, entitled "Plumbing Fixtures", is amended as follows:

i. Table 7.4.5 on page 22 is amended to insert the words "21 inches" in the space for clearance at the front of the first fixture. Also delete the word "code" and substitute in lieu thereof "Subcode" in the block at the bottom.

ii. Table 7.24.1 Note #1 is amended to delete the words "for handicapped requirements see local state and nation ordinances" and substitute in lieu thereof, the words "for handicapped requirements see the State Barrier Free Subcode N.J.A.C. 5:23-7.1 et seq."

3. Appendix D of the Plumbing Subcode, entitled "Water conservation", is amended as follows:

i. Item D.4 is amended to add a note after line 4 to read "Note: see Energy subcode for public lavatories flow rate value".

ii. Item D.7 is deleted in its entirety, and substitute in lieu thereof "See the State Barrier Free Subcode, N.J.A.C. 5:23-7.1 et seq."

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Enforcing Agencies
Proposed Amendment: N.J.A.C. 5:23-4.5, 4.19 and 4.20

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1989-552.

Submit comments by December 6, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Since the inception of the State Uniform Construction Code in 1977, the State has required municipal reporting and variously collected training fees from municipalities on a yearly, quarterly and monthly basis (see 15 N.J.R. 1789(a), November 7, 1983; 16 N.J.R. 45(b), January 3, 1984). Though the Department has continued to require monthly reporting of construction activity, it proved too cumbersome for municipalities to remit training fees this frequently, and for the Department to process so many checks. In July of 1985, the Department informed all construction officials, by letter, to modify their procedures to remit State training fees quarterly. Instructions were given to modify the monthly reporting form, then R-810, until new forms (R-840s) could be printed and distributed.

Currently, monthly activity reports are submitted on R-811A and R-812A, State training fees are submitted with R-840As, and R-800As remain optional. Fee collections have thus been made quarterly since the second half of 1985. The current rules do not, however, accurately prescribe the quarterly fee submission to the Department.

To be effective January 1, 1990, the Department has, in consultation with municipalities, inspectors, and other interested parties, revised its standard forms. In most instances, the forms previously numbered sequentially, have retained their numerical designation with an "A" added to connote the newer form. References have been updated to show the new form numbers.

Social Impact

The proposed amendments conform old regulatory language to current practice and should have no social impact other than to alleviate confusion among officials reading the text of the Code. In 1984, the Department formally changed its rules to require that municipalities remit to the Department, State training fees they collected monthly, instead of remitting them quarterly. Because monthly submissions were found to be burdensome, the Department advised municipalities by letter in 1985, to revert to their former practice of sending fees to the Department quarterly. The rules were not, however, reamended.

It will prevent confusion for the Department's regulatory references to its forms to be correct and current.

Economic Impact

The proposed amendments would formalize the current practice of allowing municipalities to remit fees quarterly instead of monthly, saving municipalities time and money by reducing paperwork.

Municipalities have already received the new forms and, in many, they have been in use for up to six months. While a few municipalities have not wanted to expend funds for printing, most have, given an approximately eight-month phase-in period, managed to shift to the new forms without difficulty. The result of much consultation and commentary, the new forms are clearer, more accurate, less expensive than the prior ones to print and compatible with UCCARS, the Department's software programs.

Regulatory Flexibility Statement

The proposed amendments have no direct effect on businesses of any size. They formalize what amounts to a paperwork reduction for municipalities, saving them time and resources.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-4.5 Municipal enforcing agencies—administration and enforcement

(a) (No change.)

(b) Forms:

1. (No change.)

2. The following standardized forms established by the [commissioner] **Commissioner** are required for use by the municipal enforcing agency:

Form No.	Name
F-100A	Construction Permit Application
F-110A	Building Subcode Technical Section
F-120A	Electrical Subcode Technical Section
F-130A	Plumbing Subcode Technical Section
F-140A	Fire Subcode Technical Section
F-160A	Application for a Variation
F-170A,B	Construction Permit, **Required Inspection**
F-180A	Construction Permit [Placard] Notice
F-190A	[Notice of] Permit Update
F-210A	Notice of Violation and Order to Terminate/Notice Order to Pay Penalty
F-220A	Inspection Sticker [Approved] **Approval for Building**
F-222A	**Inspection Sticker Approval for Electric**
F-223A	**Inspection Sticker Approval for Plumbing**
F-224A	**Inspection Sticker Approval for Fire Protection**
F-230A	Inspection Sticker—Not Approved
F-240A	Notice of Unsafe Structure/Imminent Hazard
F-245A	Unsafe Structure [Placard] **Notice**
F-250A	Stop Construction Order
F-255A	Stop Construction [Placard] **Notice**
F-260A	Certificate
F-270A	Application for Certificate
F-310A	Elevator Inspection
F-320A	Elevator [Placard] **Notice**
F-330A	Application to Construction Board of Appeals
F-340A	**Decision of Construction Board of Appeals**
F-350A	Cut-In Card
F-360A	**Denial of Permit**

3. The following standardized forms established by the [commissioner] **Commissioner** are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
F-150A	Tickler/X-Ref Card
[F-185	Required Inspection]
F-200A	Inspection Notice
F-280A	T.C.O. Control Card
F-290A	Ongoing Inspections Control Card
F-300A	Ongoing Inspections Schedule

4. (No change.)

5. Printing of forms: The municipal enforcing agency shall arrange for the printing of all forms. Other interested persons may also arrange for the printing of forms or they may purchase and use forms printed by others. The municipal enforcing agency may provide for the inclusion of its name and other appropriate identifying information on the forms it has printed. However, the municipal enforcing agency shall accept forms not having municipal identification and shall, in any such case, insert the name of the municipality. All required forms shall be exact replicas of the forms required by the [commissioner] **Commissioner**, conforming in content, size, format and colors, except that all multi-part forms may be printed with an additional copy so long as the additional copy shall be in a color distinct from those specified by the [commissioner] **Commissioner**. Forms F-110A, F-120A, F-130A and F-140A may have the Subcode Technical Sections printed in any color or colors of ink as desired and Form F-310A (Elevator Inspection) may be printed as a multipart form on separate pages with up to four copies of each page.

(c) Logs:

1. The following standardized logs established by the [commissioner] **Commissioner** are required to be maintained by the municipal enforcing agency:

Log No.	Name
L-700A	Permit Fee Log
L-710A	Inspection Log
L-720A	Certificate Log
L-730A	Ongoing Inspection Log

2. (No change.)

(d) Reports:

1. The following standardized report forms established by the [commissioner is] **Commissioner are** required to be completed by the municipal enforcing agency and transmitted to the Department [together with State of New Jersey training fees for the month preceding the month for which activity is being reported] as required by N.J.A.C. 5:23-4.19 by the [third] **tenth** business day following the end of each calendar month:

Report No.	Name
[R-810]	Municipal Monthly Activity
R-811A	Report **Certificates**
R-812A	**Municipal Monthly Activity Report Permits**

2. The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees and must be submitted quarterly pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R-840A	**State Training Fee Report**

[2.] **3.** The following standardized report form established by the [commissioner] **Commissioner** is optional for use by the municipal enforcing agency:

Report No.	Name
[R-800]	
R-800A	Inspector's Report

(e)-(h) (No change.)

5:23-4.19 State of New Jersey training fees

(a)-(b) (No change.)

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a [monthly] **quarterly** basis, in conjunction with report number R-[810] **840A** [(Municipal Monthly Activity Report)] **State Training Fee Report** in accordance with N.J.A.C. 5:23-4.5(d). Fees remitted shall be for the [month preceding the month of the activity report. Example: The report, R-810, with data from February should be transmitted to the Department by the third business day of March with the training fees that were collected in January.] **quarter. Checks shall be made payable to "Treasurer, State of New Jersey".**

5:23-4.20 Departmental fees

(a)-(b) (No change.)

(c) Departmental (enforcing agency) fees:

1.-5. (No change.)

6. Annual permits: The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

i. (No change.)

ii. Prior to the issuance of the annual permit, a training registration fee of $100.00 per subcode shall be submitted by the applicant to the Department of Community Affairs, Construction Code Element, Training Section, along with a copy of the construction permit (Form F-170A). Checks shall be made payable to "Treasurer, State of New Jersey."

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Dedication of Revenue for Code Enforcement
Proposed Amendment: N.J.A.C. 5:23-4.17

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1989-566.

Submit comments by December 6, 1989 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 52:27D-126a provides that the fees established by enforcing agencies under the State Uniform Construction Code Act "shall not exceed the annual costs for the operation of the enforcing agency." N.J.A.C. 5:23-4.17(c), which is intended to implement this provision, provides that fees must be calculated to reasonably cover the cost of enforcement. N.J.A.C. 5:23-4.17(c) is proposed for amendment to create a mechanism for ensuring that the statutory mandate is carried out and that construction code fees are indeed used for no other purpose.

This mechanism is a dedication by rider of construction fee revenue to a fund that can only be used for purposes of construction code enforcement. These purposes are defined as including the following types of expenses when incurred for code enforcement purposes: salaries and benefits, motor vehicle expenses, necessary materials and equipment, professional expenses, payment to private inspection agencies and a reasonable allocation for the indirect expenses of the local government related to construction code enforcement up to 12 percent of the total costs of the enforcing agency or such larger amount as can be justified to the Department as being in support of construction code enforcement. In order to give proof of compliance, municipalities will be required to submit to the Division of Housing and Development an independent audit, which may be a copy of the audit required to be submitted annually to the Division of Local Government Services.

It is the intention of the Department to make this requirement mandatory as of March 1, 1990. Dedication of construction fees by rider is already permissible and municipalities have been encouraged to institute the procedure voluntarily in 1989.

Social Impact

This amendment will provide the public with assurance that construction fee revenues are being used to administer the construction code, and not for any other purpose.

It will also allow municipalities to respond quickly to increases in construction activity by allowing prompt expenditure of this increased revenue that accompanies increased construction activity for the additional services required by that construction activity. During the State's recent construction boom, municipalities were hamstrung in their efforts to respond to increased construction activity by the then-current budgetary procedures. The dedication by rider approach to budgeting is most suitable to activities where neither the demand nor the dedicated revenue available to meet that demand can be readily estimated a year in advance. Construction code enforcement is the classic example of such an activity. Finally, the amendment will also simplify and streamline budgetary procedures of municipalities as they apply to construction code enforcement.

Economic Impact

Improper diversion of construction code revenues into the general fund of a municipality will be prevented by this amendment. On those occasions in the past where such diversions have occurred, persons engaged in construction have, in effect, been required to subsidize the general municipal budget, in violation of the clear intention of N.J.S.A. 52:27D-126a.

In order to assure an orderly transition to the dedication by rider procedure, municipalities should make provision for appropriation of sufficient funds from general revenue to cover the cost of operating the construction code enforcement program until such time as enough dedicated revenue has been collected. In many cases, this may be viewed as a carryover of construction fees collected in the previous year which were not yet expended for construction code enforcement purposes.

An issue that has been of great concern to municipalities since the issue of dedication of construction code enforcement revenue by rider was first raised has been the effect of this budgeting procedure upon the annual permissible spending increase under the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. The Department has been advised by the Division of Law that, under the Cap Law, an adjustment to the cap base is required whenever a municipality determines to eliminate appropriations that have previously been set forth in the part of the budget subject to the cap and to provide instead for the appropriation of such funds in a section of the budget not subject to the cap. Under such circumstances, the municipality is required to make a downward adjustment to the cap base (upon which it calculates its permissible spending increase) in an amount equal to the amount of the line-item appropriations included in the capped portion of its budget for the last budget year during which the service or function being transferred had been funded through such line-item appropriations. Accordingly, where a municipality reallocates appropriations for Uniform Construction Code purposes from that part of its municipal budget that is subject to the Cap Law's spending limitations to a part that is not subject to the cap, such as the portion of its budget containing appropriations made through dedication by rider, it should properly be required to make a downward adjustment to its cap base in an amount equal to the amount of line-item appropriations

for Uniform Construction Code purposes contained in the capped portion of the prior year's budget which is being transferred.

The provisions proposed here provide that fringe benefit costs for UCC related municipal employees should be charged to the dedication by rider. Frequently, in the past, these expenses have been accounted for within the cap even though the salaries to which they pertain were outside of cap. Nonetheless, the municipal cap need only be reduced by the amount of direct UCC related expenses that were within cap prior to the implementation of the rider procedure.

The Division of Law further advises the Department that a municipality that is making the transition from line-item appropriation for Uniform Construction Code enforcement to dedication by rider that has funds derived from Uniform Construction Code enforcement revenue remaining unspent at the end of the year is not to be appropriated by dedication by rider. Rather, such carry forward revenue should continue to be appropriated in the municipality's budget through line-item appropriations, while new revenue received is dedicated by rider. The cap law status of the carry forward revenue thus appropriated would be the same as in the previous budget year.

If a deficit exists in a budgetary rider at the close of a municipality's budget year, appropriate provision would have to be made to cover that deficit in the following year's budget. Such provision would be made in accordance with N.J.S.A. 40A:4-42. Any appropriation to meet such a deficit could be excluded from the municipality's budget cap under the Local Government Cap Law upon proper application to and approval by the Local Finance Board.

Regulatory Flexibility Statement

This proposed amendment imposes a budgetary requirement on local governments and does not have any direct effect on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface **thus**):

5:23-4.17 Municipal enforcing agency fees

(a) (No change.)

(b) Report:

1.-2. (No change.)

3. The fund containing all revenue dedicated by rider pursuant to (c) below shall be audited annually by an independent auditor acceptable to the Department and a copy of the auditor's report shall be provided to the Department when it is issued to the municipality. Submission of a copy of the annual municipal audit required to be submitted to the Division of Local Government Services at the time that it is required to be submitted to that Division shall constitute compliance with this requirement provided, however, that the annual municipal audit tests and contains an opinion that all expenditures of fees dedicated by rider have been made for purposes herein permitted.

(c) Costs: The fee schedule shall be calculated to reasonably cover the municipal costs of enforcing the regulations.

1. All fees collected after February 28, 1990 shall be dedicated by rider to be applied to the municipal costs of enforcing the regulations, which costs shall be defined as including only the following:

i. Salaries and employee benefits for licensed code enforcement officials and inspectors and clerical personnel assigned to the enforcing agency, in an amount proportionate to the time spent in performing work for the enforcing agency provided, however, that detailed time records are kept where employees divide their time between Uniform Construction Code and non-Uniform Construction Code duties;

ii. Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of mileage reimbursement paid to employees for use of their own motor vehicles, cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized), depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and cost of rental of motor vehicles for use by the enforcing agency;

iii. Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use;

iv. Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars;

v. Fees for services performed under contract by private on-site inspection agencies;

vi. Fees for the annual audit of the dedicated fund by an independent auditor; and

vii. Indirect and overhead expenses of the municipality in support of the enforcing agency including:

(1) Legislative and Executive expenses;

(2) Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;

(3) Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;

(4) Insurance except for group insurance premiums included under employer fringe benefits;

(5) General building maintenance expenses;

(6) Finance, including bookkeeping, purchasing, and auditing but excluding all tax collection and tax assessment costs; and

(7) Office space expenses, including rent or interest and debt service on municipal capital facilities.

2. Indirect and overhead expenses charged to the dedicated fee account shall only exceed 12 percent of all other costs of the enforcing agency unless the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to the rider in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge in excess of 12 percent shall be prepared and made available for inspection both by the Department and by the public.

3. This subsection shall not be construed as precluding the use of money from the general fund of the municipality to pay costs of code enforcement when the funds dedicated by rider are insufficient for that purpose or when necessary to compensate the enforcing agency for work done without fee pursuant to statute or ordinance.

(d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Landlord-Tenant Relations

Forms

Proposed New Rules: N.J.A.C. 5:29-1

Proposed Amendment: N.J.A.C. 5:29-2.2

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 46:8-28, 46:8-9.2 and 52:27D-3(e).

Proposal Number: PRN 1989-554.

Submit written comments by December 6, 1989 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 46:8-28 requires the Commissioner of Community Affairs to prescribe forms for the certificate of registration required to be filed, and to be distributed to tenants, by owners of rental dwellings other than owner-occupied two-family houses. The contents of the form to be used for multiple dwellings are prescribed by N.J.A.C. 5:10-1.11. The proposed new rules prescribe the form for non-owner occupied one- and two-unit dwellings. Forms may be obtained from private sources or from the Department, but must be in substantially the form prescribed.

N.J.A.C. 5:29-2.2, which concerns forms to be used by tenants for lease termination because of disabling illness or accident, is amended to make it clear that the forms may be obtained from private sources, as well as

from the Department, and to update the mailing address of the Office of Landlord-Tenant Information.

Social Impact

The absence of a landlord registration form prescribed by the Department for one- and two-unit rental dwellings has been a source of difficulty from time to time when various owners and attorneys have read the law carefully and sought to be in compliance with it. A standard form will now exist, although privately-printed forms that are substantially equivalent will continue to be acceptable.

Economic Impact

No significant economic impact is anticipated. Form copies may be obtained from the Department or private sources.

Regulatory Flexibility Statement

The proposed new rules impose reporting and compliance requirements on all landlords of non-owner occupied one- and two-family dwellings. An undetermined number of such owners may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As the requirements are statutory, no differentiation in requirements based upon landlord business size is possible. The Department anticipates little, if any, required cost to landlords from these rules.

Full text of the proposal follows (additions indicated in boldface **thus**):

SUBCHAPTER 1. LANDLORD IDENTITY REGISTRATION FORMS

5:29-1.1 Applicability

(a) Pursuant to N.J.S.A. 46:8-28 and 46:8-29, the form prescribed by this subchapter is required to be given by landlords to tenants in single unit dwellings and in two-unit dwellings that are not owner-occupied and to be filed in the office of the clerk of the municipality in which any such single unit dwelling or two-unit dwelling is situated.

(b) Tenants in multiple dwellings are required to be given a copy of the certificate of registration filed with the Bureau of Housing Inspection in accordance with N.J.S.A. 55:13A-12, N.J.S.A. 46:8-28 and N.J.A.C. 5:10-1.11.

5:29-1.2 One- and two-unit dwelling registration form

(a) The form of the certificate of registration to be filed with the municipal clerk and distributed to tenants by owners of non-owner occupied one- and two-unit dwellings shall be substantially as follows:

LANDLORD IDENTITY STATEMENT
(One- and Two-Unit Rental Dwellings)

1. The names and addresses of all record owners of the building or of the rental business (including all general partners in the case of a partnership) are as follows:

2. If the record owner is a corporation, the names and addresses of the registered agent and of the corporate officers are as follows:

Record owner is not a corporation.

3. If the address of any record owner is not located in the county in which the dwelling is located, the name and address of a person who resides in the county and is authorized to accept notices from a tenant, to issue receipts for those notices and to accept service of process on behalf of the out-of-county record owner(s) are as follows:

The addresses of all record owners are in the county in which the dwelling is located.

4. The name and address of the managing agent are as follows:

There is no managing agent.

5. The name and address (including dwelling unit, apartment or room number) of the superintendent, janitor, custodian or other person employed to provide regular maintenance service are as follows:

There is no superintendent, janitor, custodian or other person employed to provide regular maintenance service.

6. The name, address and telephone number of an individual representative of the record owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the dwelling or any dwelling unit, including such emergencies as the failure of any essential service or system, and who has authority to make emergency decisions concerning the building, including the making of repairs and expenditures, are as follows:

7. The names and addresses of all holders of recorded mortgages on the property are as follows:

There is no recorded mortgage on the property.

8. If fuel oil is used to heat the building and the landlord furnishes the heat, the name and address of the fuel oil dealer servicing the building and the grade of fuel oil used are as follows:

The building is not heated by fuel oil.

The building is heated by fuel oil, but the landlord does not furnish heat.

Date: _____ _____

Landlord or Authorized Representative

(b) Copies of this form may be obtained from private sources or from:

Office of Landlord-Tenant Information
Division of Housing and Development
Department of Community Affairs
CN 805
Trenton, NJ 08625

5:29-2.2 Form of notice

(a) (No change.)

(b) Copies of this form may be obtained from **private sources or from**:

Office of Landlord-Tenant Information
Division of Housing and Development
Department of Community Affairs
CN [809] **805**
Trenton, NJ 08625

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Debarment and Suspension from Agency Contracting
Conflicts of Interest
Proposed Amendments: N.J.A.C. 5:80-18.1, 18.2 and 18.3
Proposed New Rule: N.J.A.C. 5-80-18.8

Authorized By: Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Arthur J. Maurice, Executive Director/Secretary.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1989-597.

Submit comments by December 6, 1989 to:

Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
CN-18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (Agency) adopted rules governing debarment and suspension from Agency contracting in 1981. The rules set forth grounds for imposing debarment or suspension, the procedural requirements for imposing debarment or suspension and the period for debarment/suspension.

On July 20, 1988, Governor Kean signed Executive Order No. 189. The Executive Order identified certain grounds relating to conflict of interest for debarment from State agencies. The Executive Order further directed State agencies to include these grounds within their debarment regulations. The proposed amendments and new rule would bring the Agency's debarment rules in conformance with Executive Order No. 189 by adding the grounds listed in the Executive Order to the regulation.

Social Impact

The proposed amendments and new rule will impact on all persons and entities doing business with the Agency by identifying new grounds as a basis for debarment or suspension from Agency contracting. The

overall effect should be to better promote fair and open competition for Agency contracting.

Economic Impact

The proposed amendments and new rule will impact upon any person or entity found in violation of one of the new grounds by prohibiting such person or entity from conducting any business with the Agency.

Regulatory Flexibility Analysis

The proposed amendments and new rule add new grounds for the debarment or suspension from Agency contracting. No reporting or record keeping requirements are imposed by the amendments and rule. As to compliance requirements, persons and entities must refrain from engaging in the types of activities specified in the new grounds to avoid the potential for debarment or suspension. The Agency foresees no increase in capital costs or the need for professional services in meeting this requirement. Given the nature of the compliance requirement, no differentiation in the compliance requirement based upon business size is proposed. Additionally, as the proposed amendments and rule impose sanctions for certain conduct/activities, the Agency believes it is required under general principles of administrative and constitutional law to impose the new requirements equally among all businesses, regardless of size.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:80-18.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

. . .

"Agency contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for **the** Agency, other than by virtue of State or Agency employment, or to supply anything to or to perform any service for a private or public person where Agency provides substantial financial assistance and retains the right to approve or disapprove the **cost,** nature or quality of the goods or service or the person who may supply or perform the same.

. . .

"Person" means any natural person, company, firm, association, corporation or other entity **that is engaged in or offers or proposes to be engaged in Agency contracting**.

. . .

5:80-18.2 Causes for debarment of a person

(a) In the public interest, the Agency may debar a person for any of the following causes:

1.-14. (No change.)

15. Any violation of the prohibited activities listed at N.J.A.C. 5:80-18.8(a) or failure to report violations of prohibited activities as required under N.J.A.C. 5:80-18.8(b).

5:80-18.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1.-4. (No change.)

5. The existence of a cause set forth in N.J.A.C. 5:80-18.2(a)9-12 **and 15** shall be established by evidence which the Agency determines to be clear and convincing in nature.

6. Debarment for the causes set forth in N.J.A.C. 5:80-18.2(a)13 **and 14** shall be proper, provided that one of the causes set forth in N.J.A.C. 5:80-18.2(a)1-12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

5:80-18.8 Prohibited activities of persons; reporting requirement

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, State of New Jersey and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Agency. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the Executive Commission on Ethical Standards the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80-18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the Executive Commission on Ethical Standards.

(d) The Agency shall include the prohibited activities and reporting requirements in (a) and (b) above in requests for proposals by the Agency and in all contracts with every person.

Recodify existing 5:80-18.8 through 18.12 as **18.9 through 18.13.** (No change in text.)

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Nonpublic Records

Proposed New Rule: N.J.A.C. 5:80-28.1

Authorized By: Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Arthur J. Maurice, Executive Director/Secretary.

Authority: N.J.S.A. 55:14K-5g and N.J.S.A. 47:1A-2.

Proposal Number: PRN 1989-598.

Submit comments by December 6, 1989 to:

Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN-18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

Under the Public Right to Know Law, N.J.S.A. 47:1A-2, records which are required by law to be made, maintained or kept on file are deemed to be public records available for inspection and copying. The statute also provides that records otherwise deemed to be public records under the statute, may be excluded therefrom by adopting regulations setting forth which records will not be public records. Proposed new rule N.J.A.C. 5:80-28.1 sets forth those records the New Jersey Housing and Mortgage Finance Agency (Agency) deems nonpublic.

Social Impact

Adoption of the proposed rule will enable the Agency to maintain confidentiality with regard to applications for Agency programs, where the submission of complete and truthful information is necessary.

Economic Impact

The Agency foresees no economic impact resulting from excluding certain records from the Right to Know Law.

Regulatory Flexibility Analysis

The proposed new rule excludes certain Agency records from being inspected or copied under the Right to Know Law. No reporting, recordkeeping or compliance requirements are imposed on small business, the Regulatory Flexibility Act, N.J.S.A. 52:14B-6 et seq., does not apply and a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 28. NONPUBLIC RECORDS

5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the New Jersey Housing and Mortgage Finance Agency which are listed below shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of New Jersey, a court of competent jurisdiction, or applicable law.

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;

2. All personnel records;

3. All records concerning applications for employment with the Agency;

4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;

5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;

6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and

7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Criteria for Evaluation of Building Principals in State-operated School Districts

Proposed New Rules: N.J.A.C. 6:7

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7A-45.

Proposal Number: PRN 1989-514.

Submit comments by December 6, 1989 to:

Irene Nigro, Rules Analyst
NJ Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish the criteria and procedures for the evaluation of building principals in State-operated school districts. Additionally, the rules include a reiteration of procedures set forth in N.J.A.C. 6:24-5 for the evaluation of tenured building principals.

Upon appointment of a State district superintendent in a State-operated school district, the superintendent will establish an assessment unit to conduct on-site evaluations of each building principal in the district. Pursuant to N.J.S.A. 18A:7A-45, criteria for these evaluations are proposed herein.

These new rules ensure that effective leadership will be provided at every building level so that pupils will receive the thorough and efficient education to which they are entitled. The new rules are necessary in order to assure the establishment of standard criteria to measure a principal's performance in school building management.

Social Impact

The proposed new rules will have a positive social impact upon the students, parents, teachers, and the local community in State-operated school districts. They will provide a reasonable and fair method to evaluate principals. This will enable principals to maximize their skills and increase learning opportunities for students. As a result, the community will benefit by a student population with increased knowledge and self-esteem provided by a positive learning environment consistent with the effective schools research which indicates that the principal is a key reason for success or failure of a school. The rules will help to ensure effective leadership at the building level. Uniform standards will provide principals with a clear understanding of the process and basis by which they will be evaluated.

The assessment unit will consist of experienced administrators who will be specially trained by the Academy for the Advancement of Teaching and Management, and will, prior to implementation, field test the evaluation process and criteria. This will ensure that the standards for evaluation of principals will be fairly administered. Additionally, 90 days has been allocated for principals to correct any areas of inefficiency that have been documented and assures that principals will have at least two evaluations prior to notice of inefficiency and at least one evaluation after 90 days which provides the principal with an opportunity to correct the areas of inefficiency.

Economic Impact

The proposed new rules may have an economic impact upon those building principals that have been proven to be inefficient based upon the established criteria which may result in a loss of position. No statistical information is available due to the fact that this is the first time such an intervention process has been proposed. There will be an estimated cost of approximately $15,000 to the State for training and field testing of the assessment team. Similarly, there will be a cost to the State-operated school district of approximately $50,000 for the salaries of the assessment unit who will perform the assessment cycle of at least 12 months.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules impact solely upon the Department of Education and building principals in State-operated school districts.

Full text of the proposal follows:

CHAPTER 7
STATE-OPERATED SCHOOL DISTRICTS

SUBCHAPTER 1. PROCEDURE FOR EVALUATION OF BUILDING PRINCIPALS IN STATE-OPERATED SCHOOL DISTRICTS

6:7-1.1 Inefficiency defined

The word "inefficiency" when used in this subchapter shall mean the failure to demonstrate satisfactory performance in any one of the areas of school building leadership/management identified in N.J.A.C. 6:7-2.2.

6:7-1.2 Procedure for evaluation

(a) Upon appointment, the State district superintendent shall establish an assessment unit which shall conduct on-site evaluations of each building principal in the State-operated school district.

(b) No fewer than three evaluations pursuant to N.J.A.C. 6:7-2.2 shall be performed for each building principal within six months following the reorganization of the State-operated school district.

(c) Upon completion of each evaluation, the assessment unit shall provide a written evaluation report for the State district superintendent and the building principal.

6:7-1.3 Additional procedures relating to the evaluation of tenured building principals

(a) When, after review of at least two written evaluation reports, the State district superintendent determines that the evaluations support a charge of inefficiency against a tenured principal, the State district superintendent shall provide that principal with written notice of the alleged areas of inefficiency specifying the nature thereto, and provide at least 90 days in which to correct or overcome the areas of inefficiency.

(b) A principal who is given notice of the inefficiency pursuant to (a) above shall have at least one evaluation conducted after the expiration of the time period given to correct or overcome the areas of inefficiency. That evaluation shall include an assessment of the principal's performance with respect to correcting areas of inefficiency.

(c) After review of an evaluation performed pursuant to (b) above, the State district superintendent shall notify the principal if all the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected.

(d) In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

(e) Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15-day time period, the State district superintendent shall determine within 45 days whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal. If the State district superintendent determines that dismissal is not warranted, he or she shall notify the principal that he or she shall be retained. The notification shall be in writing and shall be given no later than 15 days after the expiration of the 45 day period noted in this subsection.

(f) In the event the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal, then the State district superintendent shall file such written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee. The format of the certificate shall be as set forth in N.J.A.C. 6:24-5.2 except that the State district superintendent shall act as the board of education in all respects.

(g) No tenured building principal shall be dismissed on grounds other than incapacity or unbecoming conduct prior to the completion of an assessment cycle of not less than 12 months. An assessment cycle in a State-operated school district shall begin on the date the State district superintendent establishes the assessment unit or the effective date of these rules, whichever is later.

(h) Unless otherwise provided by statute, dismissals of a tenured building principal shall be conducted in accordance with the procedures in N.J.S.A. 18A:6-10, 11, 13, 14, 16, 17 and 18A:7A-45d except that the State district superintendent shall act as the board of education in all respects.

SUBCHAPTER 2. CRITERIA FOR EVALUATION OF BUILDING PRINCIPALS IN STATE-OPERATED SCHOOL DISTRICTS

6:7-2.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Assessment of Pupil Progress" means a system of evaluating pupil performance in school programs.

"Community Relationships" means the interaction of school personnel with parents and other residents.

"Curriculum/Program" means the sum total of all programs of study in the school.

"School Climate" means the physical and social environment of the school.

"Staff Development" means a planned program that ensures the continual growth of school staff.

"Supervision of Instruction" means a process of assessment of the professional staff.

6:7-2.2 Criteria for evaluation of building principals in State-operated school districts

(a) An evaluation shall include, but not be limited to, an examination of the principal's performance based on the following criteria within the identified areas of school building leadership/management established pursuant to N.J.S.A. 18A:7A-45a:

1. Curriculum/Program: The principal exhibits consistent and effective leadership in curriculum and program by directing efforts to meet students' academic needs.

2. Supervision of Instruction: The principal exhibits consistent and effective leadership in the supervision of instruction by demonstrating that the observation of teaching and learning is a major priority.

3. Staff Development: The principal exhibits consistent and effective leadership in promoting staff development by utilizing time, human and material resources to construct a quality program.

4. Assessment of Pupil Progress: The principal exhibits consistent and effective leadership in establishing and maintaining an assessment program that measures individual and group achievement.

5. Community Relationships: The principal exhibits consistent and effective leadership in community relationships by successfully communicating school programs and priorities to the community and by demonstrating an understanding of the importance of community involvement; and

6. School Climate: The principal exhibits effective and consistent leadership in creating a positive school climate by ensuring that pupil and teacher behaviors support a productive learning environment.

(b) The areas in (a) above shall not be read to limit the State district superintendent's examination of the principal's performance. The State district superintendent may examine other areas of leadership and management that are generally accepted to be the responsibility of the school building principal.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Regulations Governing Laboratory Certification and Standards of Performance

Proposed Amendments: N.J.A.C. 7:18-1.1, 1.4, 1.6, 1.7, 7:18-2.1, 2.2, 2.3, 2.4, 2.6, 2.7, 2.10, 2.11, 2.12, 2.13, 5.3, 5.4, 5.5, 5.7 and 5.8

Proposed New Rule: N.J.A.C. 7:18-1.9, 7:18-2.15

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 58:12A-1 et seq., N.J.S.A. 26:2D-1 et seq., and specifically 26:2D-70 et seq.

DEP Docket Number: 045-89-10.

Proposal Number: PRN 1989-600.

A **public hearing** concerning these proposed amendments will be held on:

December 15, 1989 at 9:00 A.M.
War Memorial Building
Veterans Room
West Lafayette Street
Trenton, New Jersey 08625

Submit written comments by January 6, 1990, to:

Stephen Tarnowski
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Exposure to radon gas has been identified as a serious health risk in the State of New Jersey. Although the health risk is serious, mitigation of indoor radon gas concentrations is easily achieved through various ventilation methods. The cost of mitigation ranges from negligible to expensive depending on the indoor radon concentration present in the sampled home. Consequently, the quality, accuracy, and reliability of radon gas sampling procedures and laboratory sample analysis are essential for the homeowner to intelligently choose the most cost effective and efficient mitigation method.

An act concerning radon gas and radon progeny contamination, N.J.S.A. 26:2D-70 et seq., (hereinafter "the Radon Act") requires the establishment of a program for certification of persons who test for the presence of radon gas and radon progeny in buildings and thus requires that N.J.A.C. 7:18 be amended to provide for the certification of laboratories which conduct analysis of radon gas and radon progeny.

In response to the homeowner's need to have accurate and reliable radon sampling procedures and laboratory results, the New Jersey Department of Environmental Protection (Department) is proposing to amend N.J.A.C. 7:18-1, 2, and 5, Regulations Governing Laboratory Certification and Standards of Performance (Rules), to provide for the certification of laboratories performing analysis of radon gas and radon progeny. The rules currently provide administrative procedures for laboratories; laboratory certification categories and parameters; laboratory standards, criteria and procedures; and enforcement procedures pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Radon/Radon Progeny certification will be an extension of the Radiological category of certification. The addition of laboratory certification fees for Radon/Radon Progeny will provide the Department with the necessary resources to administer this new program. The proposed amendments require radon/radon progeny laboratories to pass two consecutive U.S. Environmental Protection Agency (USEPA) Radon/Radon Progeny Measurement Proficiency (RMP) rounds for each measurement technique directly prior to applying for New Jersey certification. The Department will require radon/radon progeny laboratories to participate in the RMP program throughout the fiscal year. In order for a laboratory to maintain its certification, it must continuously follow USEPA's protocols for each radon measurement technique and pass every USEPA RMP round for each measurement technique for which it is certified. These requirements are necessary to provide the public with laboratories which are capable of analyzing for radon gas and radon progeny properly.

Social Impact

For the past three years, the Department has been warning the citizens of New Jersey of the radon/radon progeny health risk. The citizens have responded to this warning by sampling homes and, using the results of these samples, mitigating their exposure to the deadly gas. The Department's Office of Quality Assurance (OQA) is concerned with the quality of work being conducted by some of the radon laboratories within the community. There have been instances in which unqualified radon laboratories have charged New Jersey citizens for radon analysis of questionable value. Amendment of these rules will provide a process by which the Department can assure the quality and reliability of radon measurement data provided to New Jersey citizens and submitted to the Department for use in its mission to protect public health and the environment. The results of the sample analyses are used to determine the extent and level of exposure of New Jersey's citizens to radon and radon progeny in air and water in buildings. The purpose of the radon laboratory certification program is to protect the public through a program which requires the use of correct technical procedures and analytical methods. The program is intended to eliminate the use of inaccurate or unsound analytical practices. Consequently, since radon analysis will be conducted only by certified laboratories, future decisions made by the Department or individual homeowners should result in an increased level of confidence in the reported data.

Economic Impact

The Department's Office of Quality Assurance, Laboratory Certification unit, presently certifies laboratories within the radiological category. Radon and radon progeny will be an extension of the radiological category of certification, with separate fees and additional technical requirements. These parameters will be monitored in the same manner as the rest of the program's parameters. The Office of Quality Assurance anticipates a large increase in costs to cover radon and radon progeny certification. A portion of its costs will be covered by the certification fees which radon laboratories will be required to pay, in accordance with N.J.A.C. 7:18-2.6, which applies to all laboratories within the Department's laboratory certification program. The fees imposed by these proposed amendments are expected to generate revenues between $30,000 and $50,000 annually. The fees will provide the estimated cost of $50,000 needed to fund one position to conduct on-site inspections of radon/radon progeny laboratories, review written reports, applications and proficiency test results and all other associated administrative tasks. The breakdown for the position is as follows:

Radon/Radon Progeny Laboratory Certification Staff	
Principal Environmental Specialist, estimated salary:	$35,000
Employee Benefits:	8,050
Indirect Costs:	10,150
Total	$53,200

All radon testing laboratories will be impacted by these fees. The proposed fees distribute the costs of the radon/radon progeny laboratory certification program equally among all participating laboratories.

Due to the Department's requirement that radon testing laboratories pass every USEPA RMP round per year in order to maintain certification, the laboratories will incur additional business costs. The USEPA prefers radon testers to ship their measurement devices (together with detailed operating instructions, etc.) to the RMP program rather than have the radon testers appear in person with their devices. Radon testers who wish to arrive in person with their devices will incur larger business expenses than the testers who choose to ship their devices to the RMP program rounds. In addition to the certification fees that a laboratory must pay in order to comply with the amended rules, other costs, such as the cost of the RMP, the cost of equipment calibration and the costs of performing duplicate and blind sample tests will impact the certified laboratory.

The amendments to these rules will have a moderate economic impact on the citizens of New Jersey. Although the collection of fees from the certified laboratories will have a minimal cost impact on the performance of radon analysis, the other costs, such as the cost of the RMP, the cost of additional equipment calibration and the costs of performing duplicate and blind sample tests associated with the laboratories certification will increase the average cost of analysis. Therefore, increasing the compliance costs of radon analysis to the certified laboratories will result in a moderate increase in the cost of analysis for the citizens of New Jersey.

However, the impact of the fee and compliance costs is offset by the benefits of having only certified laboratories (that is, only certified laboratories which meet the stringent certification standards may conduct analysis in and for the State of New Jersey). The Department's radon/radon progeny laboratory certification program will also protect the public from paying for unnecessary mitigation of their homes because of inaccurate laboratory analysis.

A radon laboratory certification program will help assure the quality and reliability of radon measurement data submitted by certified laboratories to the Department for use in administering its radon monitoring programs. New Jersey homeowners will also benefit from the radon laboratory certification program because they will be provided with accurate test results which will cause them to undertake only those remediation measures which are needed to protect them from unnecessary exposure to radon gas. This will be accomplished by the Department requiring radon testers to continuously meet the certification standards and pass every proficiency test per year, thus demonstrating to the Department throughout the year, that they are capable of accurate radon/radon progeny measurements. A positive environmental impact will therefore occur as New Jersey citizens are provided with accurate data regarding their exposure to radon gas.

Regulatory Flexibility Analysis

The proposed amendments would apply to laboratories analyzing samples for radon or radon progeny. The Department is adopting the USEPA radon/radon progeny protocols as the authorized measurement protocols for the analysis of radon/radon progeny as its certification standard as this will produce the desired accuracy and quality of data. The certification standard will minimize any adverse impact on small businesses, while still accomplishing the goals of the Department and the Radon Act. The Department estimates that, as defined in the New Jersey Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq., approximately 40 small businesses will be affected by the Department's radon laboratory certification program. Most of these small laboratories are already adhering to some of the minimum requirements. The requirement to participate in the authorized proficieny program should have only a minor impact on the cost of sample analysis since most of the authorized proficiency program participation can be fulfilled by mailing samples. It is expected that initial capital costs for each small business will be minimal, with annual costs of compliance ranging between $1,500 to $2,000. Also, the effect of the costs involved in participating in the authorized proficiency program is offset by the benefits of certification to those laboratories (that is, only certified laboratories may conduct analysis in the State). Some additional requirements for certified radon laboratories will include recordkeeping, reporting, and creating, maintaining and following standard operating procedures and quality control practices (that is, calibrations, control charts for each instrument using standards of known values and blanks, etc.). These recordkeeping and quality control requirements have always been required of all radioanalytical laboratories participating in the Department's laboratory certification program and are not expected to require significant additional expenditures. It is unlikely that laboratories will need any additional professional services to comply with these amended rules. In developing these amendments, the Department has balanced the need to protect the health of the citizens against the economic impact of the proposed amendments and has determined that to minimize the impact of the amended rules would endanger the public health and safety; therefore, no exemption from coverage is provided.

Full text of the agency proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:18-1.1 Scope and authority

This chapter, adopted pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., [and] the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., **and the Radon Act, N.J.S.A. 26:2D-70 et seq.,** constitutes the Department's regulations governing certification of laboratories performing [water] analyses required to be performed by regulations or orders issued pursuant to these acts. This chapter establishes the procedures for obtaining and maintaining certifications, and the criteria and procedures laboratories shall follow in analyzing [water] samples.

7:18-1.4 Certification program requirements

(a) Any laboratory wishing to analyze [water] samples for compliance with regulations adopted or orders issued pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., [or] the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., **or the Radon Act,** shall follow the procedure set forth herein in order to obtain and maintain certification.

(b) Certified laboratories and laboratories seeking certification shall analyze all [water] samples in accordance with the procedures and methods required by this chapter.

(c) A laboratory must be certified to test for radon or radon progeny pursuant to this subchapter before performing those activities.

1. A person shall be guilty of a crime of the third degree if they test for or mitigate against radon/radon progeny in air without being, at the time they test or mitigate, certified for those activities.

7:18-1.6 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter should be directed to the Office of Quality Assurance, [Division of Water Resources,] New Jersey Department of Environmental Protection, [P.O. Box CN-029] **CN 027**, Trenton, New Jersey 08625, **(609) 292-3950.**

7:18-1.7 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Authorized measurement protocols" means the latest edition of "Interim Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1-86-04, April 1986; and, "Interim Protocols for Screening and Follow-up Radon and Radon Decay Product Measurements", EPA 520/1-86-014, pages 4, 13 and 15.

"Authorized proficiency program" means a proficiency test available through the United States Environmental Protection Agency Radon/Radon Progeny Measurement Proficiency Program, Eastern Environmental Radiation Facility. Montgomery, Alabama 36109

"Certified radon measurement business" means a commercial radon measurement business enterprise which may manufacture or sell devices and/or test for radon/radon decay products and which is certified pursuant to the provisions of N.J.A.C. 7:28-27.

"Certified radon laboratory" means a radiological laboratory which analyzes samples for the presence of radon or radon decay products in a facility separate from the location in which the sample was taken and which uses stationary measurement detection equipment and which is certified pursuant to this chapter.

"Certified radon measurement specialist" means a person certified pursuant to N.J.A.C. 7:28-27 to administer and evaluate radon and/or radon progeny measurements for a certified radon measurement business.

"Certified radon measurement technician" means a person certified pursuant to N.J.A.C. 7:28-27 to perform radon and radon progeny measurement activities.

. . .

"Proficiency test" means a test, sample or program that is required by the Department which a laboratory must pass in order to demonstrate its ability to analyze for a particular parameter.

. . .

"Radon" means the radioactive noble gas radon-222.

"Radon Act" means N.J.S.A. 26:2D-70 et seq.

"Radon progeny" means the short-lived radionuclides formed as a result of the decay of radon-222. The short-lived radon progeny consist of polonium-218, lead-214, bismuth-214 and polonium-214.

. . .

"Working level (WL)" means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

7:18-1.9 Signatories

(a) All applicants shall, upon submission of initial or renewal applications, sign the following certification on the application forms:

1. "I certify under penalty of law that the information provided in this application is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and or imprisonment."

i. The certification set forth in (a)1 above shall be signed by the highest ranking individual at the facility with overall responsibility for that facility or the highest ranking individual with overall responsibility for more than one facility in New Jersey provided that appropriate procedures to ensure compliance are in place and subject to Department review and approval.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 above shall be signed as follows:

(1) For a corporation, by a principle executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principle executive officer or ranking elected official.

(b) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (a)1i above is the same person as the official required to certify in (a)2i, only the certification (a)1i need be made. In all other cases, the certification of (a)1 and 2 shall be completed.

7:18-2.1 Requirement of certification

(a) All [water sample] analyses performed for the purpose of determining compliance with microbiological, chemical, and radiological requirements of the State Primary and Secondary Drinking Water Regulations, N.J.A.C. 7:10-5.1[.] and 7:10-7.1, [and] microbiological, chemical and bioassay requirements of the New Jersey Pollutant Discharge Elimination System Regulations, N.J.A.C. 7:14A-1, **and radiological requirements of the Radon Act, N.J.S.A. 26:2D-70 et seq.,** or when required by order issued by the Department pursuant to the authority of the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., **the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Radon Act, N.J.S.A. 26:2D-70 et seq.,** or any other regulations adopted pursuant to those acts, shall be performed in laboratories certified for this purpose pursuant to this subchapter. Analyses performed in laboratories not so certified shall not be accepted by the Department as being in compliance with the requirements, regulations or orders of the Water Pollution Control Act or the Safe Drinking Water Act. **Results of air and water analyses for radon/radon progeny performed in laboratories not so certified shall not be accepted for use by the Department, industry, or private citizens for compliance with the Department's rules.**

(b) (No change.)

(c) Only laboratories certified pursuant to these regulations or maintained by the USEPA may be called State Certified Water **or Radon** Laboratories and no laboratory may adopt any name or make any oral or written statement intended or likely to mislead the public with respect to its certification status.

7:18-2.2 Categories for certification

(a) A laboratory may apply for certification in any one or more of the following categories and shall be certified in those parameters within the category for which its demonstrates acceptable performance on proficiency samples, when available, and meets all other requirements of this chapter. The laboratory certificate shall specify the categories and the parameters within each category for which the laboratory is certified and shall be conspicuously displayed in the laboratory in a location visible to the public. The certification categories are as follows:

1.-4. (No change.)

5. Radiological Testing, which comprises those tests or analyses for radioactivity required to determine compliance with the Safe Drinking Water Act [and], the State Primary Drinking Water Regulations, **and the Radon Act.** Tests for the Radiological category [shall be conducted in accordance with the methods and procedures specified in 40 CFR 141.] **are as follows:**

i. For drinking water, analyses shall be conducted in accordance with the methods and procedures specified in 40 CFR Part 141;

ii. For wastewater, analyses shall be conducted in accordance with the methods and procedures specified in 40 CFR Part 136;

iii. For radon and radon progeny in air, analyses shall be conducted in accordance with the methods and procedures specified in the most recent version of the authorized measurement protocols listed below (available from the Office of Quality Assurance, New Jersey Department of Environmental Protection, CN 027, Trenton, N.J. 08625, (609) 292-3950):

(1) "E.E.R.F. Standard Operating Procedures for RN-222 Measurement using charcoal cannisters", EPA 520/5-87-005, June 1987;

(2) "Interim Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1-86-04, April 1986;

(3) "Interim Protocols for Screening and Follow-up Radon and Radon Decay Product Measurements", Office of Radiation Programs, EPA 520/1-86-014, pages 4, 13 and 15; and

(4) Radon/Radon Progeny Measurement Proficiency Program Application and Participation Manual, EPA 520/1-87-001, January 1987.

iv. Radon/radon progeny sampling that is conducted by a certified radon measurement business, certified pursuant to N.J.A.C. 7:28-27, shall comply with the requirements of this chapter. In cases where the requirements of the appropriate authorized measurement protocols are not followed, the samples shall not be accepted by the laboratory for analysis. The laboratory shall not analyze radon/radon progeny samples that are taken using methods and procedures which are not specified in the authorized measurement protocols.

v. For radon and radon progeny in water, sampling shall be conducted in accordance with the methods and procedures specified in the most recent update of the USEPA publication, "Radon in Water Sampling Program", EPA/EERF-Manual-78-1 and 40 CFR 141.

6. (No change.)

7:18-2.3 Application procedures for laboratories located in New Jersey including special provisions for the phase-in of the New Jersey Pollutant Discharge Elimination System Laboratory Certification Program

(a) The owner of a laboratory in New Jersey who wishes it to be certified in any or all of the categories and parameters thereof, described in N.J.A.C. 7:18-2.2, or, if already certified, who wishes to add a category or a parameter within a category, shall apply for certification to the New Jersey Department of Environmental Protection, Division of Fiscal and Support Services, Bureau of [Collections and Licensing] **Revenue,** CN 402, Trenton, New Jersey 08625; (609) [292-4071] **530-5767** (hereinafter "Bureau"), on forms available therefrom. The applicant shall provide all information requested and shall submit the appropriate fee.

1. Laboratories seeking certification in the Radiological category shall [have participated in the USEPA's radiological proficiency testing program during the immediately preceding twelve months and shall submit copies of the USEPA's performance evaluation reports demonstrating that for each parameter in which the laboratory is seeking certification at least four performance test average values have been within the control limits established for that parameter.]:

i. For analysis of radiological or radon parameters in water, have participated in the USEPA's radiological proficiency testing program during the immediately preceding 12 months and shall submit copies of the USEPA's performance evaluation reports demonstrating that for each parameter in which the laboratory is seeking certification at least two blind proficiency evaluations and two cross checks have been within the control limits established for that parameter.

ii. For analysis of radon/radon progeny in air, be a participant in an authorized proficiency program. The laboratory shall have passed the most recent two consecutive proficiency tests for each measurement device/technique prior to applying for certification.

2. Laboratories which intend to seek certification in the Radiological category, but which have not participated in the USEPA's radiological proficiency testing program may obtain information concerning that program from the [Bureau] **Department's Office of Quality Assurance.**

(b) (No change.)

(c) If the applicant submits a complete application, the appropriate fee, proficiency data if required, and the information submitted meets the minimum requirements of this chapter for the category or categories for which certification is requested, the application shall be accepted. Acceptance of the application does not authorize the laboratory to perform [water] analyses regulated by this chapter. The applicant shall be notified of the acceptance and shall participate in the following laboratory evaluation:

1.-2. (No change.)

3. Radiological testing:

i. The Department shall contact the laboratory within three weeks after the application is accepted **and the required radiological/radon proficiency testing is completed** to arrange a mutually acceptable date for an on-site laboratory inspection, and the inspection will be conducted by representatives of the Department [and the USEPA]; and

ii. (No change.)

iii. If the Department is unable to schedule an on-site inspection within 90 days after receiving an acceptable application from a laboratory, it may grant the laboratory an interim approval to analyze radiological samples until the laboratory is inspected provided the laboratory continues to participate in the USEPA's proficiency testing program and acceptably analyze the program's samples. **The Department will not grant interim approval for radon/radon progeny analysis.**

iv. Notwithstanding (a)1ii above, radon/radon progeny laboratories applying for certification to analyze air samples, that have passed one authorized proficiency test and have not failed any ensuing authorized proficiency tests, do not have to wait more than one year for the second authorized proficiency test. If the second authorized proficiency test is not available within one year from the date the first authorized proficiency test was passed, then evaluation of the laboratory will be based solely upon the on-site laboratory inspection. Appropriate samples that are distributed by the Department or its designee to radon/radon progeny laboratories shall be accepted as authorized proficiency tests, in accordance with N.J.A.C. 7:18-2.10(b).

v. If proficiency tests are not available, then the evaluation of the laboratory will be based solely on the on-site laboratory inspection.

(d)-(f) (No change.)

7:18-2.14 Procedure for laboratories not located in New Jersey

(a) The owner of a laboratory located in a State other than New Jersey which has been certified, under conditions no less stringent than those required by this chapter, by the agency having primary enforcement responsibility under the provisions of the Federal Safe Drinking Water Act or the Agency delegated administrative responsibility for the Federal Clean Water Act NPDES program in the State where it is located, who wishes to perform water analyses in any or all of the categories described in N.J.A.C. 7:18-2.2 for public water systems or NJPDES permitted facilities located in New Jersey or as required by the Water Pollution Control Act or the Safe Drinking Water Act, shall:

1. Annually complete the application form provided by the New Jersey Department of Environmental Protection, Division of [Fiscal and Support Services] **Financial Management, Planning and General Services**, Bureau of [Collections and Licensing], **Revenue**, CN 402, Trenton, New Jersey 08625, (609)[292-4071] **530-5767**;

2. (No change.)

3. Return the form with the proper fee **and any necessary documented evidence** to the Bureau.

(b)-(d) (No change.)

(e) The owner of a laboratory in a State other than New Jersey which is not certified by that State or the USEPA, or is certified under conditions less stringent than those required by this chapter, who wishes to perform [water] **environmental sample** analyses in any or all of the categories described in N.J.A.C. 7:18-2.2 for public water systems [or], NJPDES permitted facilities located in New Jersey, **or for radon/radon progeny analysis**, or as required by the Safe Drinking Water Act, [or] the Water Pollution Control Act, **or the Radon Act,** shall apply for certification in accordance with the procedures set forth in N.J.A.C. 7:18-2.3. In addition, [prior] **subsequent** to conducting the on-site laboratory inspection, the laboratory shall submit to the Bureau as an additional fee the sum the Department determines to be sufficient to cover the travel, and room and board expenses of the certification inspectors **to conduct the on-site inspection.**

7:18-2.6 Fees

(a) Owners of laboratories applying for certification or renewal of certification, for [the] **each** fiscal year commencing on July 1, [1981 and for subsequent fiscal years] shall submit the appropriate fee obtained from the annual fee schedule below along with the required application materials. Fees are nonrefundable. Laboratories owned or operated by the State of New Jersey or an Agency of the Federal Government are exempt from this fee requirement, but, except for the Environmental Protection Agency, shall make appropriate application for certification in accordance with the other provisions of these regulations.

LABORATORY CERTIFICATION ANNUAL FEE SCHEDULE

Microbiological Testing [Chemistry]	$400.00
Any one of the following categories Limited chemistry, atomic absorption Gas Chromatography	$400.00
Any two of the above-mentioned categories	$500.00
All three of the above-mentioned categories	$600.00
Radiological Testing	
Any one or two radiological parameters	$200.00
Any additional radiological parameter	$50.00 per additional parameter
Any one radon or radon progeny testing device/technique	**$1,200**
Any additional radon or radon progeny testing device/technique	**$100.00**
Bioassay Testing	$400.00

(b)-(c) (No change.)

7:18-2.7 Required laboratory personnel policies

(a)-(c) (No change.)

(d) The laboratory supervisor shall possess the qualifications for the category which [he/she] **he or she** supervises, or for laboratories applying for New Jersey Pollutant Discharge Elimination certification during the period in which the Department offers interim approvals, shall meet the requirements of (d)8 below:

1.-5. (No change.)

6. If the laboratory performs tests or analyses in the category of Radiological Testing **for compliance with the Safe Drinking Water Act and the State Primary Drinking Water Regulations**, the supervisor shall:

i.-iii. (No change.)

7.-8. (No change.)

9. If the laboratory performs tests or analyses in the category of Radiological Testing for compliance with the Radon Act, the supervisor shall:

i. Hold a bachelor's degree from an accredited institution in chemistry, radiochemistry, radioisotope technology, biology, physics, engineering, or any of the physical or biological sciences;

ii. Have subsequent to graduation at least five years of laboratory training or experience in any of the sciences listed in (d)9i above, one year of which shall be in radiation and/or radioactivity measurements, and have successfully completed a governmental or privately sponsored course or seminar on radiation with emphasis on radon. In-house training is acceptable provided that a course outline is submitted with the application and approved by the Department; and

iii. Demonstrate competency in the operation of radon/radon progeny measurement equipment and procedures during an inspection by representatives of the Department.

(e)-(f) (No change.)

7:18-2.10 Proficiency testing

(a) (No change.)

(b) Appropriate **tests or** samples shall be distributed **or made available by the Department's Office of Quality Assurance** or its designee to such laboratories at such times and frequencies as designated by the Department**'s Office of Quality Assurance.**

(c)-(f) (No change.)

(g) Certified laboratories that desire to extend the range of tests or analyses offered shall submit a written request, comply with the requirements of N.J.A.C. 7:18-2.3 or 2.4, and shall demonstrate satisfactory results in [at least one round] **the required number** of proficiency [testing] **tests or** samples **as required by N.J.A.C. 7:18-2.3 or this section** prior to the inclusion of this test or analysis in this list of tests or analyses for which proficiency has been established.

7:18-2.11 Laboratory inspections

(a)-(f) (No change.)

(g) Whenever deviations from the requirements of this chapter are found, the laboratory shall be afforded not less than [fifteen]**15** days, nor more than [thirty]**30** days from the date the inspection report is mailed to the laboratory in which to correct such deficiencies. If deficiencies affecting the accuracy of results are found, the certification shall be immediately suspended or revoked, in accordance with the provisions of N.J.A.C. [7:8-2.12] **7:18-2.12**.

7:18-2.12 Cancellation, suspension, and revocation of certification

(a) (No change.)

(b) The Department may temporarily suspend a laboratory's certification in any or all categories or in any parameter when the laboratory fails to fully meet the standards of this chapter and the failure does not merit immediate decertification action. The Department shall notify the laboratory by letter of its suspension and the reason therefor. Suspensions may be invoked for, but are not limited to, the following reasons:

1.-5. (No change.)

6. For the Radiological category, [failing to acceptably analyze two performance test average values for any one parameter during any consecutive twelve month period shall be grounds for suspension in the parameter.] **the following shall be grounds for suspension:**

i. For radiological analyses of parameters required to be monitored by the Safe Drinking Water Act and the State Primary Drinking Water Regulations, failing to acceptably analyze two of USEPA's blind performance evaluation samples or two cross check samples for any one parameter during the fiscal year shall be grounds for suspension. For radon analysis required to be monitored by the Safe Drinking Water Act, failing to participate in and pass every proficiency test, not to exceed four tests per year, shall be grounds for suspension.

ii. For radon/radon progeny analyses of air samples, failing to participate in and pass as reported in an authorized proficiency program report, every authorized proficiency test for each measurement device/technique made available during the fiscal year, not to exceed four tests per year, shall be grounds for suspension.

7. (No change.)

(c) Certification may be revoked by order of the Department for due cause, including, but not limited to:

1.-9. (No change.)

10. For the Radiological Category, [failing to acceptably analyze two performance test average values for any one parameter during any consecutive twelve month period shall be grounds for decertification in the parameter; or] **the following shall be grounds for decertification:**

i. For radiological analyses of parameters required to be monitored by the Safe Drinking Water Act and the State Primary Drinking Water Regulations, failing to acceptably analyze two blind performance evaluation samples or two cross check samples for any one parameter during any consecutive 12 month period or for radon analysis of parameters required to be monitored by the Safe Drinking Water Act, failing to participate in and pass the next available authorized proficiency test after being suspended in any device/technique shall be grounds for decertification in that measurement device/technique; or

ii. For radon/radon progeny analyses of parameters required to be monitored by the Radon Act, failing to participate in and pass the next available authorized proficiency test after being suspended shall be grounds for decertification in the measurement device/technique; or

11.-12. (No change.)

(d) (No change.)

7:18-2.13 Effect and duration of suspension notification and revocation orders

(a) The results of any tests or analyses performed after issuance of a suspension notification or revocation order for any category or parameter suspended or revoked shall not be **submitted to or** accepted by the Department for compliance with the requirements of the New Jersey Safe Drinking Water Act, the New Jersey Water Pollution Control Act, **the Radon Act** and [Regulations] **regulations** adopted pursuant to those acts.

(b) Radon/radon progeny analysis may not be performed by any laboratory for determining radon or radon progeny levels or for compliance with the requirements of the Radon Act or Safe Drinking Water Act or regulations adopted pursuant thereto after the issuance of a suspension or revocation order.

[(b)-(d)] **(c)-(e)** (No change in text.)

(f) Use of any remedy provided by the Water Pollution Control Act, the Safe Drinking Water Act, the Radon Act or this chapter shall not preclude the use of any other remedy available to the Department.

7:18-2.15 Criminal penalties

(a) In addition to any other penalties available to the Department pursuant to the Water Pollution Control Act, the Safe Drinking Water Act, the Radon Act and this chapter, any person who violates the Radon Act or any rule or regulation adopted pursuant to the Radon Act is guilty of a crime of the third degree.

(b) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.

7:18-5.3 Specifications for laboratory equipment and instruments

(a) Laboratories performing radiological tests and analyses shall have on the premises and under the control of the laboratory manager the equipment and instruments listed in this section necessary for the preparation and analysis of the specific standards and samples for which the laboratory is seeking certification or is certified. Such instruments, when required, shall meet the following specifications:

1. The following are specifications for general instrumentation and equipment:

i.-xi. (No change.)

xii. For radon/radon progeny measurements, where required by the authorized measurement protocols, a microscope, microfiche, or automated counting system capable of detecting and counting alpha tracks shall be used. For measurements made with a radon progeny integrating sampling unit (RPISU), a thermoluminescent dosimeter (TLD) reader is required for analysis. The method used for detecting and counting radon/radon progeny shall give good quantitative results (that is, precision, accuracy, and reproducibility), and the laboratory shall demonstrate this capability.

(b) (No change.)

7:18-5.4 Preservation of samples, methodology, and major instrumentation

(a) Table IV below gives the minimum requirements for sample handling including preservation, methodology, and major instrumentation.

Table IV

Sample Handling, Preservation, Methodology[1]
and Major Instrumentation (Minimum Requirements)

Parameter	Preservative[2]	Container[3]	Instrumentation[4]
Gross alpha	Conc. HCl or HNO_3 to pH<2[5]	P or G	A or B
Gross beta	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Strontium-89	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Strontium-90	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Radium-226	Conc. HCl or HNO_3 to pH<2[5]	P or G	A, B or D
Radium-228	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Cesium-134	Conc. HCl or pH[X]2	P or G	A or C
Iodine-131	None	P or G	A
Tritium	None	G	E
Uranium	Conc. HCl or HNO_3 to pH<2[5]	P or G	F
Photon emitters[7]	Conc. HCl or HNO_3 to pH<2[5]	P or G	C
Radon/radon progeny in air	**None** **6**		**6**
Radon in water	**None**	**G**	**6, E**

[1] **With the exception of measurement of radon/radon progeny in air, all other methods are from** 40 CFR part 141.

[2] It is recommended that the [preservation] **preservative** be added to the sample at the time of collection unless suspended solids activity is to be measured. However, if the sample must be shipped to a laboratory or storage area, acidification of the sample (in its original container) may be delayed for a period not to exceed 5 days. A minimum of 16 hours must elapse between acidification and analysis.

[3] P = Plastic, hard or soft; G Glass, hard or soft.

[4] A = Low background proportional system; B = Alpha scintillation system; C = Gamma spectrometer (Na(Tl) or Ge (Li)); D = Scintillation cell (radon) system; E = Liquid scintillation system [(section C.2a)]; F = Fluorometer [(section C.1.1)].

[5] If HCl is used to acidify samples which are to be analyzed for gross alpha or gross beta activities, the acid salts must be [coveted] **converted** to nitrate salts before transfer of the samples to planchets.

[6] **Methods and instrumentation requirements as specified in N.J.A.C. 7:18-2.2(a)5i, iii, iv and v and N.J.A.C. 7:18-5.5(a)1 and 2.**

[7] **Chromium-51, Cobalt-60, Ruthenium-106, Zinc-65.**

7:18-5.5 Methodology

(a) Laboratories [shall use the analytical procedures specified in 40 CFR 141.] **performing radiological analyses shall use the following analytical procedures:**

1. For drinking water analyses, the laboratory shall use the analytical procedures specified in 40 CFR 141;

2. For analyses of radon/radon progeny performed in the laboratory, the laboratory shall follow the protocols specified in N.J.A.C. 7:18-2.2(a)5iii, iv and v for sampling, measurement criteria and analytical procedures of all measurement devices/techniques.

(b) All procedures other than those set forth in [subsection (a) of this section] **(a) above** are considered alternative analytical methods as described in 40 CFR 141.27. Laboratories shall make special application to the Commissioner for the use of alternative analytical methods and such application shall include a showing of acceptable comparability data.

7:18-5.7 Quality control

(a) Laboratories shall develop and implement quality control procedures meeting the following minimum requirements:

1.-3. (No change.)

4. All radon/radon progeny measurement devices/techniques shall be calibrated at least once each year. Permanent records shall be maintained of preventive maintenance, periodic inspection, testing, and calibration for the proper operation of radiation instruments and analytical balances; validation of methods; **chain of custody records and procedures;** evaluation of reagents and volumetric equipment; surveillance of results; and remedial actions taken in response to detected defects. **For radon/radon progeny analysis, all information specified by the authorized measurement protocols and methods described in N.J.A.C. 7:18-2.2(a)5iii, iv and v and N.J.A.C. 7:18-5.5(a)1 and 2 shall be recorded and maintained.** [Such] **All** records shall be kept on file by the laboratory for a period of at least five years.

5.-8. (No change.)

7:18-5.8 Records and data reporting

(a)-(b) (No change.)

(c) A record shall be maintained for at least five years of the daily receipt of samples. Each such record shall be numbered or otherwise appropriately identified and shall contain the following information:

1.-3. (No change.)

4. The date, time and specific location of sample collection. **For radon/radon progeny samples taken by a certified radon specialist or certified radon technician, the record shall also include a chain-of-custody form that will state which sampling device/technique was used and to the best of the sampler's knowledge, whether the authorized protocols were followed.**

5.-8. (No change.)

(d) The original or a true duplicate of the results of the tests or analyses shall be sent promptly to the person who requested such tests or analyses. The results shall be on the laboratory's report form and signed by the laboratory manager or a designee whose designation is in writing and has been submitted to the Department.

1. For laboratory analysis of radon/radon progeny in air, the results of such analysis shall be sent, on the laboratory's letterhead, directly to the owner of the building requesting the analysis and to the Department.

(e) Whenever a certified laboratory refers samples to another certified laboratory for analysis, the person [requesting the analysis or tests] **who ultimately receives the results** shall receive the laboratory report or a true duplicate of that report on the report form of the laboratory that performs the tests or analyses. In the case of tests or analyses performed under the Safe Drinking Water Act Regulations for Public Noncommunity Water Systems, where use of a specific laboratory report form is required, the laboratory performing the tests or analyses shall report the results on such required form.

(f) Laboratories shall follow the chain of custody procedures set forth in N.J.A.C. 7:18-4.4[(e)] **(f)6, 4.8(b),** 4.8(c), **5.8(c)4,** and [4.8(d)] **5.8(g)1.**

(g) Records of radiological analyses shall be kept by the laboratory for not less than five years. This includes, but is not limited to, all raw data, calculations, quality control data, and reports. In addition, actual laboratory reports shall be kept for not less than five years. However, all data, with the exception of compliance check samples as detailed in 40 CFR 141.33(b), may be transferred to tabular summaries provided that the following information is included:

1. The date, specific place, and time of sampling. **For radon/radon progeny samples taken by a certified radon specialist or certified radon technician, the record shall also include a chain-of-custody form that will state which sampling device/technique was used and to the best**

of the sampler's knowledge, whether the authorized protocols were followed.

2.-7. (No change.)

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Volatile Organic Substances in Consumer Products

Proposed Amendments: N.J.A.C. 7:27-23.2, 23.3, 23.4, 23.5, 23.6 and 23.7

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 047-89-10.

Proposal Number: PRN 1989-601.

A **public hearing** concerning these proposed amendments will be held on:

December 5, 1989 at 10:00 A.M.
War Memorial Building
Veterans Room
West Lafayette Street
Trenton, New Jersey

Submit written comments by December 8, 1989 to:

Gary J. Brower, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

Copies of this notice and of the proposed amendments are being deposited and will be available for inspection during normal business hours until December 8, 1989, at:

Atlantic County Health Department
201 South Shore Road
Northfield, New Jersey 08225

Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840

New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street, Second Floor
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Northern Regional Office
1259 Route 46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Twin Rivers Professional Building, Route 33
East Windsor, New Jersey 08520

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 Clementon Road, 3rd Floor North
Gibbsboro, New Jersey 08026

These amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, hereinafter referred to as subchapter 23. This subchapter controls the emission of volatile organic substances (VOS) into the atmosphere by limiting the amount of VOS allowed in architectural coatings and air fresheners. Subchapter 23 was adopted as part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The Department is proposing amendments to subchapter 23 intended to facilitate implementation, compliance and enforcement of the rule. This proposal responds to a rulemaking petition received by the Department (see 21 N.J.R. 2132(d) and 21 N.J.R. 2403(c)) and to certain concerns expressed during the public comment period of a previous proposal on this subchapter adopted elsewhere in this issue of the New Jersey Register.

Five amended definitions and one new definition are being proposed. In N.J.A.C. 7:27-23.2, the definition of "all others" is being amended to "all other architectural coatings". This revised category name more clearly indicates the affected products. The definition for "fire retardant coating" is being changed to a more objective measure of what makes a coating fire retardant. This definition is the same as that included in the model rule issued by the California Air Resources Board (CARB). This new definition will remove any ambiguity about this category. The amended definition of "shellac" makes it clear that only those coatings formulated with lac resins are truly shellacs. This will eliminate the possibility of abuse of this category. The definition of "volatile organic substance" is being cross referenced to the identical definition of this term in N.J.A.C. 7:27-16. This change will simplify possible future changes to this definition and ensure consistency of the definition between subchapters. In order to close a possible loophole in the definition of "wood preservative coating", it is being amended to say that the coating must be registered as a pesticide product, not simply that a registered pesticide product must be added.

The new definition is for the term "label". The definition allows information printed directly on the container to be considered part of the label. This will increase the options manufacturers have for placement on the container of certain information required by the subchapter.

In N.J.A.C. 7:27-23.3, a "grandfather clause" is being proposed. It will allow the continued sale of noncomplying coatings manufactured prior to the January 1, 1990, or February 28, 1990 compliance date. This "grandfather" period is proposed to last for three years, until February 28, 1993. At that time all products subject to the rule will be required to be in compliance with all provisions, regardless of date of manufacture. The "grandfather" period will permit the orderly sell off of noncomplying coatings, and reduce or eliminate the need to dispose of coatings as a hazardous waste or reship them to another state.

Three years was chosen as a reasonable time period for "grandfathering" of coatings because it will give sufficient time for the turn over of slow moving stock. Popular types and colors of paint will most likely turnover in two to six months. This will include the majority of the volume, approximately 85 percent, of all architectural coatings. The other 15 percent of coatings will have three years for turnover. This should be adequate for turnover of such a small percentage of total stock.

In Table 1, contained in N.J.A.C. 7:27-23.3(f), the amended category name "all other architectural coatings" is replacing "all others".

A "grandfather clause" also is proposed for N.J.A.C. 7:27-23.4, which covers air fresheners. Again, a three year sell off period is being established to allow for sell off of existing noncomplying stock manufactured prior to the compliance date.

Amendments are being proposed for the labeling requirements in N.J.A.C. 7:27-23.5. Because a definition of "label" is being added, phrases such as "or a sticker affixed to the label" are no longer needed. Any sticker would be considered part of the label, using this new definition. Therefore, such phrases are proposed for deletion. However, the location on the container where certain information must appear and the minimum print size are being specified. The Department believes that the information required on the label should be readily discernible to consumers, and has therefore specified the general location of the information and, for VOS information, a minimum print size. This will ensure that the VOS statement and other required information is easy to locate and read on the container.

The specific phrases indicating VOS content originally required by N.J.A.C. 7:27-23.5 are being proposed for deletion. These requirements will be replaced by one requiring a statement of maximum VOS content in pounds per gallon for architectural coatings and one requiring a statement of maximum VOS content in weight percent for air fresheners. This is to mitigate burdens caused by labeling requirements that are different from those of other states. However, comparability of information between products is needed so that consumers can make informed choices. Therefore, the type of information required is being specified.

With the inclusion of a "grandfather clause", it becomes necessary to know when a given product was manufactured. Therefore, a provision requiring the date of manufacture or a code indicating the date of manufacture on the container is being proposed at N.J.A.C. 7:27-23.5(c). This provision will enable the Department to distinguish between noncomplying coatings manufactured prior to the applicable compliance date and not in violation of the rule during the "grandfather" period, and noncomplying coatings manufactured after the applicable compliance date and in violation of the rule.

N.J.A.C. 7:27-23.5(e) is being amended to clarify that the manufacturer of a product registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., is responsible for submitting information to the Department. Also, to allow for the time necessary to print the new, approved labels, a six month period is being proposed between approval of label changes by the United States Environmental Protection Agency (USEPA) and the required use of these labels on the manufacturer's product.

N.J.A.C. 7:27-23.6 is being amended to revise the recordkeeping required of affected businesses. The recordkeeping presently included in the rule will be replaced by two requirements. One is to include a statement on shipping documents indicating that the products shipped comply with the regulatory requirements of this subchapter. Those receiving these documents will be required to maintain them for five years. The other requirement is a reporting provision. Records sufficient to supply certain information to the Department must be maintained by all manufacturers of consumer products and reports on this information must be submitted to the Department upon request. Such reports will allow the Department to more efficiently gather information from industry for use in future amendments to this rule. It will also help in the evaluation of trends in VOS content in consumer products. This recording and reporting are considered by the Department to be a first step in a pollution prevention program for consumer products.

Amendments are being proposed for the inspections section, N.J.A.C. 7:27-23.7(b). The specific requirements applying to manufacturing facilities are being separated from those for distributors and retailers. This is in response to questions on how inspections will apply to retail establishments and what is expected of the different types of businesses.

Social Impact

Subchapter 23 is designed to control emissions of VOS which are part of a mixture of pollutants that react to form ozone in the outdoor atmosphere. The USEPA has established an NAAQS of 0.12 parts per million averaged hourly for ozone, which is currently exceeded in New Jersey. Attainment of this standard will have a positive social impact by alleviating the effects of exposure to elevated ozone concentrations on the inhabitants of New Jersey.

The amendments proposed will result in approximately 100 tons of additional VOS emissions averaged over three years. This insignificant increase in emissions will be offset by several factors. The proposed amendments will allow a phase in of complying products, thus avoiding any sudden disruptions in the marketplace when the VOS standards go into effect. Also, allowing the continued sale of noncomplying products manufactured prior to the applicable compliance date for three years, will reduce, if not eliminate, the need for hazardous waste disposal by distributors and retailers. The indefinite "grandfathering" of use by consumers eliminates the need for the citizens of New Jersey to find hazardous waste disposal options for consumer products currently in their homes.

Exposure to ozone in concentrations greater than the NAAQS causes a decrease in the pulmonary function in humans and may cause lung damage. Ozone also increases the ability of an inhaled infectious virus to survive within the lung. A reduction of the ambient ozone concentration in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ambient ozone concentration. The amendments being proposed are not anticipated to significantly reduce the effectiveness of this rule in controlling emissions of VOS from consumer products.

Economic Impact

It is anticipated that the proposed amendments will have a positive economic impact. Manufacturers, distributors and retailers will be able to continue to sell noncomplying products manufactured prior to the applicable compliance date, rather than disposing of them as a hazardous waste or shipping them to another state. This will result in avoiding costs that have been estimated to average three to five dollars per gallon of noncomplying coating, depending upon the option chosen. This estimate does not include the cost of lost revenue for stock that cannot be sold.

In addition, the cost of compliance with the rules has been reduced by modifying the labeling and recordkeeping requirements. By deleting the need to use the specified statement of VOS content on the label, manufacturers will have more latitude in how to include this information, making the labeling more universal between states, while continuing to provide necessary information. For the recordkeeping, there will no longer be a separate document to be generated, distributed and maintained. Shipping documents are generally kept for other purposes already, such as tax records, and they can now also be used for compliance with this subchapter. It is estimated that this change could save distributors at least $10,000 per year, and a similar amount for manufacturers.

Retailers will now be included in the requirement to keep records. It is estimated that there should be a negligible increase, if any, in operating costs for retailers to keep records. Most businesses currently maintain invoices or other shipping documents for inventory or tax purposes. Such documents will now also serve as the records necessary for this subchapter.

Environmental Impact

These proposed amendments will facilitate implementation, compliance and enforcement of the rules. The reduction in VOS emissions that will result from the implementation of this subchapter will provide significant progress toward attainment of the NAAQS for ozone and will help alleviate the effects of exposure to elevated ambient concentrations of ozone on the environment of New Jersey. The implementation of these proposed amendments will allow the release of approximately 100 tons of additional VOS emissions over three years. However, this is more than offset by the environmental benefit of the reduced need for hazardous waste disposal.

Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury in the environment. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve damage to plants and thereby improve agricultural productivity and support healthier growth of both natural vegetation and ornamental plantings.

Materials such as rubber, textiles, dyes and paints are susceptible to ozone degradation. The damaging effect of ozone is due to its oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate by oxidation at high ozone concentrations than by oxidation by atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate the increased rate of degradation of natural and man-made materials.

The environmental impact of these amendments will be negligible. It has been estimated that the present rules will prevent 5,450 tons of VOS from reaching the atmosphere every year. At most, the inclusion of a "grandfather clause" in the rules will result in an estimated 100 tons of additional emissions released over three years. These additional emissions will result from the estimated 15 percent of noncomplying coatings that will remain in the distribution chain after January 1, 1990. This 100 tons represents less than two percent of the expected reduction in VOS emissions for these rules. This is a small amount and will have an insignificant impact on the environment.

Additionally, any negative impact will be offset to some extent by the additional benefit of eliminating the need for disposal of unsold noncomplying paint as hazardous waste. By allowing the continued sale of noncomplying coatings manufactured prior to the compliance date, these paints can be sold and used in the normal manner rather

than disposed of as a waste, which could create an additional environmental hazard.

Regulatory Flexibility Analysis

Most of these amendments have been proposed in response to the concerns of small businesses. The majority of retail outlets are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The inclusion of a "grandfather clause" in the rules will reduce or eliminate the need for these small businesses to discard unsold noncomplying products, thus avoiding the cost of disposal and lost inventory.

Some distributors are also small businesses. These amendments will have the same effect for distributors as for retailers in regard to noncomplying products manufactured prior to the applicable compliance date.

The changes to the labeling requirements will reduce or eliminate the need for separate labels for New Jersey, thus reducing the cost of relabeling for small businesses. This could benefit up to 70 percent of all manufacturers of architectural coatings who are small businesses and the small percentage of manufacturers of air fresheners who are small businesses.

The reduction in the recordkeeping requirements will reduce the burden on manufacturers and distributors of affected products. There will be no need to generate and maintain additional documents. Storage costs for records will decrease, since the records necessary are most likely already kept by businesses. The costs to keep records for retailers, who are almost all small businesses, will be negligible and no exemption is needed for them.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:27-23.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"All [others] **other architectural coatings"** means any coating which does not meet any other architectural coating definition.

. . .

"Fire retardant coating" means any coating which [is designed to retard fire and which will reduce the rate of flame spread on the surface of a substrate to which the coating has been applied, resist ignition when exposed to high temperatures, or insulate the substrate to which such a coating has been applied and thus prolong the time required to reach ignition temperature] **has a flame spread index of less than 25 when tested in accordance with ASTM Designation E-84-87, "Standard Test Method for Surface Burning Characteristics of Building Material", after application to Douglas fir according to the manufacturer's recommendation.**

. . .

"Label" means anything functioning as a means of identification, such as any paper, plastic or printed inscription, placed on the container provided to direct or indirect consumers.

. . .

"Shellac" means any clear or pigmented coating formulated [with natural resins, except nitrocellulose or gum resins] **solely with the resinous secretions of the lac beetle (laccifier lacca),** thinned with alcohol, and dried by evaporation without a chemical reaction.

. . .

"Volatile organic substance" or "VOS" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances [including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater measured at standard conditons; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1, 1, 2-trichloro- 1, 2, 2-trifluoroethane, 1, 2-dichloro-1, 1, 2, 2-tetrafluoroethane, and chloropentafluoroethane] **defined as a volatile organic substance in N.J.A.C. 7:27-16.**

. . .

"Wood preservative coating" means any coating which is formulated for the purpose of protecting exposed wood from decay or insect attack [by the addition of a wood preservative product] **and which is** registered **as a pesticide product** by the EPA.

7:27-23.3 Architectural coatings

(a) [Effective January 1, 1990 for Group I coatings and effective February 28, 1990 for Group II coatings, no] **No** person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating **manufactured after January 1, 1990, for Group I coatings and after February 28, 1990, for Group II coatings** which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in [(e)] **(f)** below.

(b) Effective February 28, 1993, no person shall sell, offer for sale, provide, or hold for sale within New Jersey any architectural coating which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

[(b)] **(c)** (No change in text.)

[(c)] **(d)** The provisions of (a), [and] (b) **and (c)** above shall not apply to architectural coatings sold in:

1.-2. (No change.)

[(d)] **(e)** (No change in text.)

[(e)] **(f)** Table 1 contains the VOS content limits for architectural coatings:

TABLE 1
VOS CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type of Architectural Coating	Maximum Allowable Volume of Coating Pounds Per Gallon	VOS Content Per Excluding Water Kilograms Per Liter
Group I		
Bituminous pavement sealer	0.8	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40
Industrial maintenance primer or topcoat	3.8	0.45
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
Non-flat architectural coating	3.2	0.38
Primer, sealer, and undercoater	2.9	0.35
Roof coating	2.5	0.30
Swimming pool coating	5.0	0.60
Traffic coating	2.1	0.25
Waterproof mastic coating	2.5	0.30
Wood preservative coatings	4.6	0.55
Group II		
Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	4.6	0.55
opaque	2.9	0.35

Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All [others] **other architectural coatings**	2.1	0.25

7:27-23.4 Air Fresheners

(a) [Effective February 28, 1990, no] **No** person shall sell, offer for sale, hold for sale, use, or manufacture for sale within New Jersey any air freshener **manufactured after February 28, 1990,** which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(b) Effective February 28, 1993, no person shall sell, offer for sale, or hold for sale within New Jersey any air freshener which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

[(b)] **(c)** The provisions of (a) **and (b)** above shall not apply to air fresheners sold in New Jersey for shipment and use outside of the State. Documentation indicating the final destination of product shipments shall be made available to representatives of the Department upon request.

7:27-23.5 Labeling Requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. The label **on the side of the container** shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. The statement shall **either** specify [either] that the coating is to be applied under normal environmental conditions without thinning, or limit thinning required for normal environmental conditions such that **after thinning** the coating will not exceed its applicable standard as given in Table 1 at N.J.A.C. 7:27-23.3[(e)]**(f)**.

[2. The label or a sticker affixed to the label shall carry the following statement:

"This product contains a maximum of x pounds of VOS per gallon of coating."

i. Where x is the maximum pounds of VOS in a gallon of the architectural coating as produced by that manufacturer, excluding water and after any recommended thinning.]

2. The label on the side of the container shall include a statement which specifies the maximum pounds of VOS in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. This statement shall be prominent and in print no smaller than 0.16 inches (four millimeters) in size.

[(b) For any consumer product containing greater than five percent VOS and subject to the requirements of N.J.A.C. 7:27-23.4, the following statement shall be displayed on all labels or on a sticker affixed to the label:

"This product contains x percent VOS."

i. Where x is the maximum weight percent of VOS in that manufacturer's consumer product.]

(b) For any air freshener containing greater than five percent VOS and manufactured after February 28, 1990, a statement shall be displayed on the label which specifies the maximum concentration of VOS in percent by weight in that manufacturer's air freshener. This statement shall be prominent and in print no smaller than 0.16 inches (four millimeters) in size.

(c) For all consumer products subject to (a) and (b) above, the label shall display the date on which the contents were manufactured or a code indicating the date of manufacture. The manufacturer shall supply an explanation of each code used to sellers of the product and the Assistant Director, Enforcement Element, Division of Environmental Quality, CN 027, Trenton, New Jersey, 08625, by February 28, 1990, and thereafter, thirty days prior to the use of any new or altered code.

[(c)] **(d)** (No change in text.)

[(d)] **(e)** The provision of (a), [and] (b) **and (c)** above shall not apply to any consumer product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq., provided **the manufacturer files** an application for any registration amendment necessary for compliance with this subchapter [is filed] with EPA prior to [the product's compliance date as established by N.J.A.C. 7:27-23.3(a)] **February 28, 1990.** A copy of this application shall be simultaneously submitted **by the manufacturer** to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN 027, Trenton, New Jersey 08625. Those products for which an application for an amended registration has been submitted in a timely manner are exempt until such time as the amendment request has been approved by EPA. Within 30 days of receipt of notice of EPA action on an amendment request, a copy of that notice will be supplied to the Assistant Director, Enforcement Element, at the address specified above. **Within six months of the receipt of an approval of a label change, the manufacturer shall begin use of the amended label on his or her product.**

7:27-23.6 [Recordkeeping] **Administrative requirements**

(a) Each manufacturer **and distributor** of a consumer product[, except consumer insecticides,] subject to this subchapter shall [:] **include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer, a statement indicating that the consumer products included on that shipping document and subject to this subchapter, shipped by that manufacturer or distributor for sale in New Jersey, are in compliance with this subchapter. The statement shall further acknowledge that the manufacturer or distributor is aware there are penalties for noncompliance with this subchapter. These documents shall be maintained by the manufacturer and the person receiving them for no less than five years and shall be made available to the Department upon request.**

[1. Document the maximum VOS content of the consumer product shipped for use in the State as it leaves the facility. A copy of this documentation shall be provided to the distributor or retailer to whom the consumer product is delivered.

2. Maintain records regarding the consumer products leaving the facility including the maximum VOS content, the destination of the shipment, shipment quantity and other such information as the Department may prescribe.]

[(b) Each distributor shall maintain records regarding each delivery of covered consumer products received. Distributors shall additionally maintain records regarding the consumer products leaving the facility including the maximum VOS content, the destination of the shipment, shipment quantity and such other information as the Department may prescribe.]

(b) Each manufacturer of a consumer product which contains VOS and is sold for use in New Jersey shall maintain records indicating the types of products produced by that manufacturer for sale in New Jersey, the number of units produced, the VOS content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. Upon the request of the Department, the manufacturer shall submit a report on forms obtained from the Department about products sold in New Jersey containing VOS. Records sufficient to provide the above information shall be maintained by each manufacturer for five years.

[(c) For consumer insecticides, each manufacturer shall document the VOS content of the consumer insecticide shipped for use in the State as it leaves the facility.

(d) All records and documentation shall be maintained for not less than five years, and shall, upon request of the Department be available for review.]

7:27-23.7 Inspections

(a) (No change.)

(b) Owners or operators, and any employees or representatives thereof, **of any manufacturing facility** shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. **Any facility manufacturing a product will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility.** Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of consumer product being provided, stored, transported, exchanged

in trade, sold, or offered for sale at the manufacturing[, retail, or distribution outlet] **facility**. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or indirect consumer shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of consumer product being provided, stored, transported, exchanged in trade, sold, or offered for sale by the indirect consumer or at the retail or distribution outlet. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of consumer product at the facility are available on site, these equipment or facilities shall be made available for Department use.

(a)

COMMISSION ON RADIATION PROTECTION

Particle Accelerators for Industrial and Research Use

Proposed New Rules: N.J.A.C. 7:28-20
Proposed Amendment: N.J.A.C. 7:28-1.4

Authorized By: Commission on Radiation Protection, Max Weiss, Chairman.

Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7, 26:2D-9(f), 26:2D-9(h), and 26:2D-10.

DEP Docket Number: 044-89-10.

Proposal Number: PRN 1989-575.

A **public hearing** concerning the proposed new rules will be held on Thursday, December 14, 1989 at 10 A.M. at:

Department of Environmental Protection
Radiation Protection Element
Large Conference Room
729 Alexander Road
Princeton, New Jersey

Submit written comments by January 8, 1990 to:

Mark Wenzler, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (hereinafter the "Act") was enacted. This Act provides authority to set standards for the possession, handling, transportation and use of sources of ionizing radiation within the State of New Jersey. The Act created the New Jersey Commission on Radiation Protection (CORP) and vested in that body the authority to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation.

Pursuant to the Act, CORP proposes to amend N.J.A.C. 7:28-1 to add the definition of "registrant".

Pursuant to the Act, CORP is proposing a new subchapter, N.J.A.C. 7:28-20, Particle accelerators, which will establish standards for the use of particle accelerators. The proposed new subchapter will require safety and operating procedures for particle accelerators which are now commonly in use but which previously have not been subject to regulation. It is expected that the regulation of particle accelerators will reduce the potential for exposure to unnecessary radiation.

N.J.A.C. 7:28-20.1 provides that a person shall not operate or permit the operation of a particle accelerator unless the equipment and installation meet the requirements of this subchapter and other applicable requirements of this chapter.

N.J.A.C. 7:28-20.2 provides definitions applicable to this proposed new subchapter.

N.J.A.C. 7:28-20.3 requires that all particle accelerators in use in this State be registered in accordance with N.J.A.C. 7:28-3.

N.J.A.C. 7:28-20.4 establishes general requirements a particle accelerator facility must meet, including the appointment of a particle accelerator safety officer (PASO) and a radiation protection committee.

N.J.A.C. 7:28-20.5 establishes that a particle accelerator may not be used in the healing arts without prior Departmental approval. If approved, it must also meet requirements of N.J.A.C. 7:28-14.

N.J.A.C. 7:28-20.6 establishes a training program for the safe use of the particle accelerator and requires that each operator complete the training program and an examination.

N.J.A.C. 7:28-20.7 establishes shielding design requirements for particle accelerators.

N.J.A.C. 7:28-20.8 requires control and interlock systems for particle accelerators, including interlocks at all entrances to a target room or high radiation area which terminate the production of radiation upon entry.

N.J.A.C. 7:28-20.9 establishes requirements for warning devices for a particle accelerator.

N.J.A.C. 7:28-20.10 establishes operating procedures for particle accelerators.

N.J.A.C. 7:28-20.11 establishes radiation monitoring requirements for particle accelerators. Specific requirements for radiation area monitors and personnel monitoring devices are also established.

N.J.A.C. 7:28-20.12 establishes requirements for ventilation systems for particle accelerators.

N.J.A.C. 7:28-20.13 establishes requirements for electron microscopes.

The standards for particle accelerator facilities established by this subchapter are equivalent to the generally accepted standards of good practice for the industry.

Social Impact

The use of radiation is an indispensable part of daily living, and in some instances the presence of radiation in the environment is desirable and necessary. However, the goal of this radiation protection program is the elimination of unnecessary radiation and the reduction of necessary radiation dose levels to a point that is as low as reasonably achievable. Particle accelerators produce many products that are valuable to the general public. They are also of value in research areas. By requiring training programs for the safe use of particle accelerators, as well as radiation protection and safety device requirements, CORP is seeking to ensure that both those working with particle accelerators and the general public will be protected from unnecessary radiation.

The proposed new rules will not change the current procedures for the use of the majority of particle accelerators. They will establish procedures and requirements that are the same as the generally accepted standards of the industry. The proposed new rules will establish safety and operating procedures for particle accelerators which are now commonly in use. Enforcement of these rules will minimize any adverse impact that could result from unrestricted use of radiation producing machines. The adoption of these rules will close gaps in current rules which do not specifically address particle accelerators.

Economic Impact

The proposed new rules will require minimal new expenditures on the part of the regulated community. For those particle accelerators currently in use and installed prior to the effective date of these rules, there are no new requirements that would significantly increase costs for personnel or equipment. The rules were written with the knowledge of the equipment currently in use. For equipment not yet installed, the proposed rules do not require any equipment currently not available from all the leading manufacturers of particle accelerators. The cost of preparing and maintaining the records required by the rules is minimal compared to the benefits of ensuring the quality of the training and operation.

A significant economic impact will fall upon those particle accelerator facilities with seriously deficient equipment or standards of practice. In such instances, CORP has determined that the additional cost incurred will be more than offset by the resulting improvement in safety for both workers and the general public.

Environmental Impact

The proposed new rules establish standards which will protect the workers, the public and the environment from unnecessary exposure to radiation resulting from the use of particle accelerators. The proposed

rules set standards which will prevent or reduce the release of unnecessary radiation to the environment, and, therefore, a positive environmental impact will result.

Regulatory Flexibility Analysis

N.J.A.C. 7:28-20 reflects the radiation protection standards of the National Council on Radiation and Measurements (NCRP), the International Commission on Radiological Protection (ICRP), the American National Standards Institute (ANSI), and the Suggested State Regulations for the Control of Radiation (SSR). These standards are currently followed by most owners of particle accelerators. Radiation producing machine safety performance standards and facility radiation protection operating procedures are also addressed.

The proposed new rules will apply to all particle accelerators used in New Jersey. Pursuant to the definition of "small business" in the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.), five of the 90 businesses currently registered and operating particle accelerators in this State are small businesses and will be impacted by the proposed new rules.

It is not anticipated that small businesses will need additional professional services or incur capital costs in order to comply with the rules. The small businesses will incur minimal costs associated with the additional time required for the development and administration of the training program required by N.J.A.C. 7:28-20.6. In developing these rules, CORP balanced the need to protect the public from unnecessary radiation against the expected economic impact of the proposed rules, and has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health and safety. Therefore, no exemption from the rules is provided.

Full text of the proposal follows (additions indicated in boldface **thus**):

7:28-1.4 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Additional words and terms, applicable to a specific subchapter only, will be found in that subchapter.

(a) General Terms:

. . .

"Registrant" means a person who is required to register with the Department pursuant to this chapter, N.J.A.C. 7:28.

(b)-(c) (No change.)

SUBCHAPTER 20. PARTICLE ACCELERATORS FOR INDUSTRIAL AND RESEARCH USE

7:28-20.1 Scope

(a) This subchapter establishes requirements and procedures for the registration and use of all particle accelerators, with the exception of those regulated by N.J.A.C. 7:28-14, 15 and 16.

(b) A person shall not operate or permit the operation of a particle accelerator unless the equipment and installation meet the applicable requirements of this subchapter.

(c) In addition to the requirements of this subchapter, all registrants of particle accelerators are subject to all other applicable requirements of N.J.A.C. 7:28-1 through 11, 13, and 14.

7:28-20.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Controlled area" means any area to which the access, occupancy, and activity of those within are subject to control and supervision for the purpose of radiation protection.

"Direct supervision" means guidance and instruction by the qualified machine operator who is physically present, is watching the operation of the particle accelerator, and is available for immediate assistance.

"High radiation area" means an area which is accessible to workers and in which there exists radiation at such levels that a major portion of the human body could receive in any one hour a dose in excess of 100 millirem.

"kVp" means kilovolt potential.

"Particle accelerator" means any machine that accelerates charged particles (electrons, protons, deuterons, or other charged particles, etc.) in a vacuum and discharges the resulting particulate or other radiation but which does not meet the specifications of machines currently regulated under N.J.A.C. 7:28-14 and 17. Particle accelerators include, but are not limited to, machines used for research, irradiation, or other purposes. Such machines include, but are not limited to, potential-drop accelerators, electron linear accelerators, cyclotrons, betatrons, microtrons, ion implant accelerators, and electron microscopes. Particle accelerators do not include high voltage generators, televisions, video display terminals, cathode ray tubes or other similar devices whose primary purpose is not the production of a useful charged particle beam.

"Particle accelerator facility" means the location at which one or more particle accelerators are installed and are operated under the same administrative control.

"Particle accelerator safety officer" or "PASO" means the person who is appointed and authorized by the registrant to act on the registrant's behalf to implement and maintain the particle accelerator radiation protection program for the registrant's facility.

"Protective barrier" means a barrier of radiation-absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for protection purposes to reduce the radiation exposure so that it does not exceed two milliroentgens per hour.

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two milliroentgens per hour.

"Qualified machine operator" means a person who meets the requirements of N.J.A.C. 7:28-20.6(a).

"Radiation protection committee" means a group consisting of at least three individuals appointed by the registrant who identify radiation safety problems, initiate, recommend, or provide corrective action plans, and verify the implementation of corrective actions. One member of this committee shall be the particle accelerator safety officer and one member shall be a representative of management. The remaining members shall be appointed at the discretion of the registrant.

"Scattered radiation" means radiation that, during passage through matter, has changed in direction or in energy.

"Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

"Stray radiation" means the sum of leakage and scattered radiation.

"Target room" means the room in which the particle accelerator beam terminates.

7:28-20.3 Registration requirements

A person shall not possess, control, use or cause a particle accelerator to be used unless it has been registered with the Department pursuant to N.J.A.C. 7:28-3.

7:28-20.4 General requirements for a particle accelerator facility

(a) Particle accelerators capable of operating at less than 25 kVp shall be exempt from the requirements of (b) through (f) below and N.J.A.C. 7:28-20.5 through 20.12 provided that the initial or repeat radiation protection survey does not yield radiation levels greater than 0.1 millirem per hour using maximum operating conditions of operation as measured five centimeters from any accessible surface.

(b) A registrant shall not permit a particle accelerator to be operated unless the person operating the particle accelerator has met the requirements of N.J.A.C. 7:28-20.6(a).

(c) A registrant shall not use a particle accelerator or cause it to be used unless the equipment, facilities, operating procedures, and emergency procedures are adequate to minimize danger to property and to public health and safety.

(d) The registrant of a particle accelerator facility shall appoint a particle accelerator safety officer (PASO) who is authorized to act on behalf of the registrant to implement and maintain a radiation safety program for the particle accelerator facility.

(e) A particle accelerator safety officer shall meet at least one of the following five criteria:

1. Certification in health physics by the American Board of Health Physics or certification in therapy physics and/or radiological physics by the American Board of Radiology;

2. A bachelor's degree from an accredited college in biology, chemistry, radiation sciences, physics, engineering, or mathematics and six years of professional technical experience in the field of radiological health or in a radiation protection activity. At least one year of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working;

3. A master's degree in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering, or a related field and at least five years of professional technical experience in the field of radiological health or in a radiation protection activity. At least one year of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working;

4. A doctorate degree in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering, or a related field plus four years of professional technical experience in the field of radiological health or in a radiation protection activity. At least one year of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working; or

5. Ten years of professional technical experience in the field of radiological health or in a radiation protection activity. At least five years of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working.

(f) The registrant of a particle accelerator shall appoint a radiation protection committee whose approval shall be required for implementation of procedures for the use of each particle accelerator. The PASO shall be a member of this committee.

7:28-20.5 Use of particle accelerators on humans

(a) A registrant shall not use a particle accelerator or cause it to be used for the intentional irradiation of humans without first sending to the Department a written request stating the registrant's reasons for seeking to so use the particle accelerator and the manner in which it will be used, and obtaining written approval from the Department.

(b) A registrant shall not use a particle accelerator or cause it to be used for the intentional irradiation of humans unless the equipment meets the requirements of this subchapter and N.J.A.C. 7:28-14.

7:28-20.6 Training program on the safe use of each particle accelerator

(a) The registrant shall establish and maintain a training program on the safe use of each particle accelerator. The registrant shall not permit any person to operate the particle accelerator until that person has successfully completed the training program consisting of the 10 items set out below. The registrant shall ensure that the training program is taught by the PASO or an individual with equivalent qualifications and that the program shall include all of the following:

1. Instruction in the types, characteristics, location, and levels of radiation produced by the particle accelerator;

2. Instruction in the units of radiation exposure, dose, dose equivalent, and quantity of radioactivity associated with the particle accelerator;

3. Instruction in the biological effects of ionizing radiation;

4. Instruction in the methods used to prevent radiation exposure at the particle accelerator facility (for example, time, distance, shielding, interlock system, safety procedures, radiation monitoring equipment, etc.);

5. Instruction in the use and care of personnel monitoring equipment employed at the particle accelerator facility;

6. Instruction on the location and use of all operating controls for the particle accelerator;

7. Instruction on the requirements of this subchapter and N.J.A.C. 7:28-1 through 11, 13, and 14;

8. Instruction in the facility's written operating and emergency procedures;

9. An examination testing the operator's knowledge of the requirements of (a)1 through 8 above. The examination shall be of sufficient depth to demonstrate that the operator has received instruction in each of the items listed above and has an understanding of the items at a level which permits the operator to use the particle accelerator in a manner consistent with the overriding goal of minimizing danger to public health and safety; and

10. At least 100 documented hours of on-the-job training under the direct supervision of a qualified machine operator and certified in writing by the PASO. The registrant shall maintain this documentation and certification for five years at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(b) The registrant shall require each operator to become requalified not less than once every three years by completing a refresher training course covering the requirements of (a)1 through 9 above. The registrant shall maintain a record of each individual completing the refresher training course for five years at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(c) A registrant may permit a person to function as an operator's assistant under the direct supervision of a qualified machine operator until that person has completed a training course covering the requirements of N.J.A.C. 7:28-20.6(a)1 through 10.

(d) The registrant shall maintain records of the operator's training program, including a copy of the examination, for at least five years at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

7:28-20.7 Shielding design and radiation area survey requirements for a particle accelerator

(a) The registrant shall consult with the PASO with respect to the health physics considerations in the design of a particle accelerator installation. The registrant shall maintain a record of this consultation at the particle accelerator facility for five years. The record of this consultation shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(b) A registrant shall not install a particle accelerator unless such unit is designed and constructed with primary and/or secondary protective barriers as are necessary to comply with the permissible dose rates, radiation levels and concentrations specified in N.J.A.C. 7:28-6.

(c) A registrant shall ensure that a radiation survey of controlled areas and of adjacent areas is performed by the PASO or by a qualified individual under the supervision of the PASO to ensure that radiation exposure of individuals conforms to N.J.A.C. 7:28-6, and an inspection is performed of the health physics aspects of the facility when the particle accelerator is first capable of producing radiation, but before the particle accelerator is used for any purpose other than installation or assembly of the particle accelerator, or the conducting of radiation surveys and health physics inspections.

(d) The registrant shall ensure that a written report of the radiation survey and health physics inspection is performed by the PASO or by a qualified individual under the supervision of the PASO for review by the registrant. The registrant shall maintain these reports for five years at the particle accelerator facility. These reports shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(e) Prior to operation of the particle accelerator the registrant shall implement or cause to be implemented the recommendations listed in the radiation survey and health physics report, including any special limitations, which are necessary to comply with the requirements of this chapter.

(f) The registrant shall submit a copy of the radiation survey and health physics report to the Department within 30 days of the date of the survey, and shall maintain the original radiation survey and health physics report for five years at the particle accelerator facility. The survey and health physics reports shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(g) The requirements of (c) above shall be followed when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas, or at intervals not to exceed one year.

(h) The registrant shall maintain at least two radiation survey instruments suitable for measuring all levels and energies of radiation capable of being produced by the particle accelerator. At least one of these

radiation survey instruments shall be calibrated, operable, and easily accessible at the facility for use at all times.

(i) A registrant shall not use or cause a radiation survey instrument to be used unless:

1. A spot check is conducted on the survey instrument prior to each day's use;

2. The survey instrument is calibrated at intervals not exceeding one year using a nationally recognized calibration criteria;

3. The survey instrument is recalibrated each time it is serviced or repaired. If the service involved only a battery replacement, the survey instrument does not have to be recalibrated; and

4. The calibration of the survey instrument has been performed by or under the supervision of the PASO. The calibration procedure shall be performed by a qualified expert using nationally recognized calibration procedures which comply with National Institute of Science and Technology standards. These procedures shall identify the calibration source used. Results of each calibration of the survey instrument shall be maintained at the particle accelerator facility for five years. The record of these results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(j) The registrant shall maintain for five years all records of instrument calibration reports for each radiation survey instrument at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

7:28-20.8 Particle accelerator controls and interlock systems

(a) A registrant shall not operate or cause a particle accelerator to be operated unless the particle accelerator has been provided with:

1. Clearly identified and easily discernible instrumentation, readouts and controls pertinent to the production of radiation;

2. A personnel safety interlock system designed with a personnel safety interlock circuit. The personnel safety interlock system shall include a visual search procedure to clear personnel from the target room and high radiation areas prior to the production of radiation;

3. Personnel safety interlocks on all entrances into a target room and other high radiation areas that automatically terminate the production of radiation upon entry;

4. Circuitry such that when a safety interlock has been tripped, it shall only be possible to resume operation of the particle accelerator by manually resetting the controls, first at the position where the interlock has been tripped, and thereafter at the main control console;

5. Circuity such that each personnel safety interlock is on a separate circuit which shall allow its individual operation independent of all other interlocks;

6. Safety interlocks designed with fail-safe characteristics so that any defect or component failure in the interlock system prevents the production of radiation; and

7. An easily identifiable emergency radiation cutoff switch shall be located in all high radiation areas and at the control console. Each cut-off switch shall include a manual reset switch so that the particle accelerator cannot be restarted from the accelerator control console without resetting the cut-off switch.

(b) A registrant shall not cause or allow a person to intentionally bypass an interlock which permits the production of radiation, unless such bypass is:

1. Authorized for a specified time limit by the radiation protection committee or PASO in writing prior to the bypass;

2. Recorded in a permanent log;

3. Accompanied by the posting of a prominent notice at the particle accelerator control console and at the personnel entrance being bypassed; and

4. Terminated as soon as possible.

7:28-20.9 Warning devices

(a) The registrant shall equip all locations designated as high radio areas and all entrances to such locations with easily observable warning lights that operate when, and only when, radiation is being produced, and which shall be labeled to indicate that, when lit, radiation is being produced. The warning lights shall be included in the electrical circuity of the particle accelerator such that when a warning light is not lit radiation cannot be produced.

(b) In each high radiation area the registrant shall provide audible and visual warning devices which shall be interlocked and activated for at least 30 seconds prior to production of radiation by the particle accelerator. Such warning devices shall be clearly discernible and labeled as to their function. The audible warning device alarm may be terminated once the high radiation area has been secured. Particle accelerator facilities designed and approved for human exposure are excluded from this requirement.

(c) The registrant shall identify barriers, temporary or otherwise, and pathways leading to high radiation areas in accordance with the labeling, posting and control requirements of N.J.A.C. 7:28-10.

7:28-20.10 Operating procedures

(a) A registrant shall not operate or permit the operation of a particle accelerator unless all of the following requirements have been met:

1. The particle accelerator is equipped with a means to prevent its unauthorized use;

2. The particle accelerator is equipped with a clearly identifiable switch on the accelerator control console which requires a positive, intentional action on the part of the operator for routine use in turning the particle accelerator beam on and off;

3. The safety interlock system shall not be used to turn off the particle accelerator beam except in an emergency;

4. The proper operation of all safety and warning devices, including interlocks, is verified by the PASO at intervals not to exceed 30 days. Each safety and warning device shall be listed separately in a log in which the test results are recorded. The registrant shall maintain the log for five years at the particle accelerator facility. The log shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request;

5. Electrical circuit diagrams accurately reflecting the current status of the particle accelerator and the associated interlock systems shall be available to the operator and for inspection by the Department. The electrical circuit diagrams shall be reviewed and/or revised by the PASO at intervals not to exceed one year. The registrant shall maintain a record of such review for five years at the particle accelerator facility. The record shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request;

6. A copy of the current operating and the emergency procedures shall be prepared by the PASO and maintained at the particle accelerator control panel. These operating and emergency procedures shall be reviewed and/or revised by the PASO at intervals not to exceed one year. The registrant shall maintain a record of such review with the current operating and emergency procedures at the accelerator facility for five years. This record shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request; and

7. The written operating and emergency procedures shall address the methods used to prevent radiation exposure at the particle accelerator facility. The procedures shall include, but not be limited to, the following topics:

i. The interlock systems;

ii. The safety procedures that apply to each particle accelerator;

iii. The types and use of personnel monitoring equipment;

iv. The procedures and personnel requirements for changing the target;

v. The handling and disposal procedures for disposing of a target;

vi. The procedures for surveys and wipe tests; and

vii. The emergency procedures applicable to each particle accelerator.

7:28-20.11 Radiation area and personnel monitoring requirements

(a) The registrant shall identify in writing all types of radiation that will be produced, both primary and secondary, by the particle accelerator and the monitoring equipment selected to measure all the corresponding types and energies of radiation levels. The registrant shall maintain these records at the particle accelerator facility for five years. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(b) The registrant shall continuously monitor the radiation levels in all high radiation areas. The area monitoring devices shall be electrically independent of the particle accelerator control and interlock systems.

These devices shall be capable of providing a remote and local readout with visual and/or audible alarms at the control panel, any entrance to high radiation areas, as well as at other appropriate locations determined by the PASO so that a person entering the high radiation area or present therein becomes aware of the existence of the hazard.

(c) The registrant shall have all area monitors calibrated at intervals not to exceed six months and after each servicing and repair according to written procedures established by the PASO. The calibration procedures and records shall be maintained for five years at the particle accelerator facility. These procedures and records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(d) Surveys shall be performed by the PASO or other qualified individual under the supervision of the PASO at least once in each quarter of the calendar year to determine that the amount of airborne particulate radioactivity present in controlled areas is in compliance with N.J.A.C. 7:28-6. Where survey results indicate noncompliance with N.J.A.C. 7:28-6, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-6 shall be taken. Use of the particle accelerator is prohibited until such time as new surveys show that compliance with N.J.A.C. 7:28-6 has been achieved. The results of the surveys shall be maintained for five years at the particle accelerator facility. Survey results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(e) Wipe tests shall be performed by the PASO or other qualified individual under the supervision of the PASO upon initial use of the particle accelerator and, thereafter, at least every six months to determine the degree of removable contamination in the target area and other pertinent areas to ensure compliance with N.J.A.C. 7:28-9. Where wipe test results indicate noncompliance with N.J.A.C. 7:28-9, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-9 shall be taken. Use of the particle accelerator is prohibited until such time as new surveys show that compliance with N.J.A.C. 7:28-9 has been achieved. The results of the wipe tests shall be maintained for five years at the particle accelerator facility. Wipe test results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(f) Surveys shall be made by the PASO or other qualified individual under the supervision of the PASO upon initial use of the particle accelerator and, thereafter, not less than once annually, to determine the levels of radiation resulting from activation of the target and other pertinent areas to determine compliance with N.J.A.C. 7:28-6 and 9. Where tests results indicate noncompliance with N.J.A.C. 7:28-6 and 9, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-6 and 9 shall be taken. Use of the particle accelerator is prohibited until such time as test results show that compliance with N.J.A.C. 7:28-6 and 9 has been achieved. The results of the surveys shall be maintained for five years at the particle accelerator facility. Surveys shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(g) The PASO shall develop procedures for making surveys and wipe tests required by (d), (e), and (f) above. These procedures shall be in writing and shall be kept at the particle accelerator facility. These procedures shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request. The survey and wipe test procedures shall contain, but shall not be limited to, the instrumentation to be used in conducting surveys and wipe tests, method of performing the survey and wipe test (for example, points on equipment from where wipe samples will be taken and method of obtaining the wipe sample), and method of calculation of survey and wipe test results.

(h) The registrant shall supply all individuals with and shall require these individuals to use and wear appropriate personnel monitoring equipment as listed below when entering the area which has been defined as a high radiation area while the particle accelerator is in operation:

1. Direct reading dosimeters capable of measuring doses from zero to one roentgen measured in milliroentgen increments and be provided with an audible indicator discernible above ambient noise. The direct reading dosimeter shall be read daily and doses shall be recorded in a log book; and

2. Portable radiation survey instruments capable of measuring the maximum radiation levels anticipated to be present at the facility and which are provided with an audible indicator discernible above ambient noise.

(i) The registrant shall ensure that the PASO assigns appropriate personnel monitoring equipment to each individual who works with the particle accelerator and that the use of such personnel monitoring equipment meets the requirements of N.J.A.C. 7:28-7.

(j) The registrant shall immediately determine the radiation level measured by a personnel monitoring device if a direct reading dosimeter indicates "discharged" or greater than 200 milliroentgens exposure.

(k) The registrant shall maintain the personnel monitoring reports and the daily log records of the direct reading dosimeter values at the particle accelerator facility to insure compliance with N.J.A.C. 7:28-8. These records and logs shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

7:28-20.12 Ventilation systems

(a) The registrant of a particle accelerator shall prevent personnel entering any area where airborne radioactivity may exceed those limits specified in N.J.A.C. 7:28-6.

(b) The registrant of a particle accelerator shall prevent radioactive material from being vented, released or otherwise discharged into the air outside a controlled area in excess of the concentrations specified in N.J.A.C. 7:28-6.

7:28-20.13 Electron microscopes

(a) A person shall not use or cause to be used an electron microscope unless it has been registered pursuant to N.J.A.C. 7:28-3.

(b) Electron microscopes incapable of operating at 30 kVp or above shall be exempt from the requirements of N.J.A.C. 7:28-20.4 through 7:28-20.12 and (e)1 and 2 below provided the initial or repeat radiation protection survey does not yield radiation levels, using maximum conditions of operation as measured at five centimeters from any accessible surface, greater than 0.1 millirem per hour.

(c) The registrant shall not use or cause an electron microscope to be used unless a radiation protection survey has been performed under the supervision of the PASO to ensure compliance with N.J.A.C. 7:28-5 and 7 before the electron microscope is put into operation. The registrant shall submit a copy of the survey report to the Department within 30 days of the date of the survey and shall maintain the original survey report at the electron microscope facility. The survey report shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request. The electron microscope shall be resurveyed after every repair, modification, or relocation. The registrant shall submit a copy of the survey report to the Department within 30 days of the date of the resurvey and shall maintain the resurvey report at the electron microscope facility. The resurvey shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(d) The registrant shall ensure that the electron microscope operating parameter indicators and controls pertinent to the production of radiation are clearly identified and easily discernible. The electron microscope shall be provided with a clearly visible label bearing the conventional radiation symbol and the words CAUTION: THIS EQUIPMENT PRODUCES X-RAYS WHEN ENERGIZED or other words having equivalent meaning affixed near the controls which energize the high voltage.

(e) The registrant shall provide each electron microscope operator with appropriate personnel monitoring equipment as required by N.J.A.C. 7:28-7 and require that the device be worn by each individual during operation of the electron microscope.

1. The registrant shall ensure that the personnel monitoring reports received from the personnel monitoring device processor contain the information required in N.J.A.C. 7:28-8; and

2. The personnel monitoring reports received from the personnel monitoring device processor shall be maintained for inspection by the employee and the Department pursuant to the requirements of N.J.A.C. 7:28-8.

(f) The registrant shall provide a means to secure the electron microscope to prevent unauthorized use when not in operation.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Certification of Radon Testers and Mitigators

Proposed New Rules: N.J.A.C. 7:28-27

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, N.J.S.A. 13:1D-9, N.J.S.A. 26:2D-1 et seq., and particularly 26:2D-70 et seq.

DEP Docket Number: 046-89-10.

Proposal Number: PRN 1989-599.

A **public hearing** concerning these proposed new rules will be held on:
December 12, 1989 at 10 A.M.
State of New Jersey Auditorium
New Jersey State Museum
205 West State Street
Trenton, New Jersey 08625

Submit written comments by January 6, 1990 to:
Stephen Tarnowski
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Exposure to radon and its decay products has been identified as a significant health risk. However, the conditions under which unsafe levels of radon gas accumulate in structures can, in most instances, be successfully remediated. Therefore, there is a need for accurate, reliable and quality testing and mitigation services so the public can feel confident in evaluating its health risk due to exposure to radon and its decay products and in determining the type of mitigation service they may need.

To address this need, the New Jersey Department of Environmental Protection (the "Department") is proposing to amend N.J.A.C. 7:28 to include a subchapter establishing requirements for the certification of radon and radon progeny testers and mitigators.

This proposed subchapter applies to all persons who test for radon and radon progeny or mitigate and safeguard against radon. It provides a uniform standard of performance which firms and individuals desiring to be certified for radon and radon progeny testing or radon mitigation must meet. Unless exempted, persons who sell devices or offer testing, mitigation, or safeguard services in New Jersey for radon or radon progeny are covered by this subchapter. Franchised firms will be treated as separate businesses. Mitigation devices that reduce only radon progeny levels will not be certified under this subchapter. Exempted from the proposed subchapter are persons performing radon testing or mitigation on a building which he or she owns, or persons performing radon testing or mitigation without remuneration.

The proposed subchapter establishes certification requirements for radon measurement and mitigation businesses, specialists and technicians. There are several prerequisites to receiving certification, all of which must be documented in applications submitted to the Department. Generally, an individual applicant must have taken Department approved or sponsored training courses, passed Department approved examinations, and have the requisite experience and education.

If the applicant is a firm, it must have certified individuals managing and performing its radon measurement or mitigation activities. Firms are asked to describe measurement and mitigation practices in their applications and will be certified to perform only those activities approved by the Department through the certification process. In addition, all firms must have a radiological safety plan. Testing firms must have a quality assurance program and be successfully enrolled in an authorized radon measurement proficiency program. Those certified firms which use radon testing devices that require non-portable analysis equipment such as that used for charcoal canisters and alpha track detectors must secure these analytical services through a Department certified radon laboratory. Any certified radon laboratory that sells devices or provides testing services to clients must also be certified as a certified radon measurement business under this subchapter. Firms are also required to regularly submit reports to the Department on their mitigation and testing activities.

Proficiency requirements are proposed in this subchapter. The certified tester or mitigator who analyzes his or her own samples must meet the proficiency requirements by passing periodic proficiency tests. A certified tester or mitigator who does not analyze samples must use a Department certified radon laboratory to analyze its samples. A Department certified radon laboratory must also pass periodic proficiency tests.

Businesses or specialists or technicians can have their certifications suspended or revoked for violating any requirement in the proposed subchapter. For mitigation businesses this includes the failure to continually demonstrate effectiveness of mitigation systems, materials or procedures in reducing radon levels in buildings. Suspensions and revocations are effective immediately and their duration shall be based on the severity of the violation, as determined by the Department. They may not be withdrawn until all bases for the suspension or revocation have been eliminated or rectified. Suspensions and revocations are being utilized as enforcement tools to emphasize that the protection of the public's environmental health and safety is of paramount concern to the Department. N.J.S.A. 26:2D-72 states that beginning after 90 days of the establishment of the certification program, no person shall test for or mitigate or safeguard a building from, the presence of radon gas and radon progeny. Since a number of qualifications, for example, work experience or educational requirements are needed in order to become certified, a provisional certification will be available to individuals wishing to enter the industry.

Following adoption of the proposed subchapter, the Department will provide, or otherwise arrange for, such training and examinations as are required by the rules. To assure availability of these activities to businesses and persons seeking certification, the date of establishment of the certification program will be 90 days after the publication date of the adoption of the rules.

To allow for a smooth implementation of the mandatory certification program, the firms on the New Jersey Voluntary Certification List as of January 1, 1990 shall be temporarily certified pursuant to the provisions of N.J.A.C. 7:28-27.35.

A fee structure is being proposed which the Department estimates will be sufficient to cover the costs of administering the certification programs. The fee structure includes application and examination fees and program administration fees based, in part, on the firm's business activity.

It is anticipated that the proposed new rules will provide New Jersey residents with properly educated and experienced people who will perform quality testing and mitigation services which are necessary for protection against exposure to radon and radon decay products.

Social Impact

The purpose of the proposed subchapter is to protect the public by requiring radon firms and individuals to meet minimum performance standards prior to and while certified to perform radon testing or mitigation and to maintain the availability of quality services at a reasonable cost. This proposed subchapter provides the process by which the Department will determine that radon testers and mitigators meet minimum standards of proficiency. The rules require businesses to use authorized testing procedures and effective mitigation systems which, in turn, will reduce health risks from radon. Proficient testers and mitigators also assist the Department by providing reliable information and data which are necessary for the Department and the public to make informed decisions about radon exposure and mitigation. This subchapter requires a thorough reporting system which will discourage false or misleading statements on radon exposure.

An additional positive social impact is provided through the requirement of timely notification to the Department of high radon levels by certified radon measurement specialists, technicians and businesses. This will enable the Department to take prompt steps to protect public health from high levels of radon exposure.

Economic Impact

Implementation of this subchapter will require State resources. Personnel are required to review and evaluate applications, provide or approve training courses and examinations, manage the data received from testing and mitigation firms, and otherwise enforce the provisions of the rules on a firm by firm basis. Some of these State activities, such as application review, depend on the number of firms seeking certification, but not necessarily on the size of the firm. The resources required for other activities, such as data management, will depend on firm size and business activity. Therefore, a fee schedule has been established, in accordance

with N.J.S.A. 26:2D-75, to cover costs of the certification programs through a combination of various types of fees. Businesses wishing to become certified in the radon testing and mitigation industry will be required to pay fees in order to support the program. These fees include: (1) specific fees for application review, courses, exams and inspections ranging from $50.00 to $400.00 depending upon the category of certification; (2) semi-annual program administration fees against firms, independent of the firms' activity; and (3) activity-based fees charged against firms based on their level of radon testing and mitigation services performed in the State. The fee schedule is contained in N.J.A.C. 7:28-27.30.

Estimated staffing and program costs per year for the certification programs follow:

Radon Certification Program Staff

Research Scientist I	
Administrative Analyst (2)	
Research Scientist II (2)	
Project Specialist (2)	
Principal Clerk Typist	
Senior Clerk Typist	
Estimated Salaries	$218,979
Fringe Benefits	$ 54,745
Indirect Costs	$ 82,117

Program Costs

Printing and Office	$ 9,000
Vehicular (gas, oil)	2,000
Scientific/Engineering Supplies	1,500
Travel	3,000
Telephone	3,000
Postage	2,000
Data Processing Supplies	5,000
Professional Services	7,700
Training, Other Services	2,000
Maintenance of Equipment	3,000
Maintenance of Vehicles	500
Rent: Buildings and Grounds	7,000
Rent: Central Motor Pool	7,000
Data Processing—Hardware	7,000
Scientific Equipment	5,000
Total Program Costs	$ 64,700

Estimated Totals

Salaries	$218,979
Benefits and Indirect Costs	$136,862
Program Costs	$ 64,700
TOTAL ESTIMATED BUDGET	$420,541

The fee schedule was designed to meet the above fiscal requirements. Based on estimates of the anticipated number of firms, specialists, and technicians seeking certification, it was estimated that on a long term basis the fees for training courses, examinations, application review, and inspections will pay for about 20 percent of the required cost of the program. Semi-annual program administration fees will cover about 50 percent of the State's costs. Additional fees based on the number of measurement and mitigation actions performed will meet the remaining 30 percent of the costs to administer the program.

Environmental Impact

The radon tester and mitigator certification programs will help to assure that quality radon testing and mitigation and safeguard services are available to the public. Through compliance with the requirements of these rules, the people of New Jersey can expect to obtain accurate test results, which will help them to assess their remediation needs and the type of mitigation and safeguarding services which are needed to protect them from unnecessary exposure to radon and radon decay products. The public confidence in these services will be enhanced by the requirement that radon testers and mitigators continuously meet certification standards, thus demonstrating to the Department that they are taking accurate radon and/or radon progeny measurements and implementing effective mitigation and safeguarding techniques. A positive environmental impact will therefore occur as New Jersey citizens will be provided with accurate information regarding their exposure to radon and radon decay products and the steps necessary to reduce that exposure. In addition, they can feel confident that the contractor they hire to mitigate a radon threat is knowledgeable in radon mitigation practices.

Regulatory Flexibility Analysis

The proposed new rules would apply to all persons who test for radon and radon progeny or mitigate and safeguard against radon. It is estimated that of the approximately 200 businesses impacted by these rules, 175 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and will be impacted. In order to comply with these rules, the small businesses will have to satisfy the requirements set forth in N.J.A.C. 7:28-27. All certified measurement and mitigation businesses will be required to report to the Department and maintain at their facilities all information associated with conducting a measurement or mitigation of a structure. The information that must be reported includes locations where test or mitigations were performed and specifics on the type of test conducted or mitigation system installed. The documents that must be retained by a certified firm include copies of authorized test methods and techniques, mitigation plans and complete applications. To comply with these rules, a small business will need to employ certified radon specialists and technicians. Other costs to firms include equipment, laboratory, and proficiency test costs. These costs will range from a few hundred dollars for a small firm to thousands of dollars for a firm that purchases portable analytical equipment. The initial certification and annual recertification costs for each small business are minimal, ranging from $50.00 to $400.00, depending upon the level of certification. A program administration fee is also assessed based, in part, on firm activity. However, the program administration fee can be paid after the firm has accrued revenues from its business activity and is greater for larger firms with more business activity. Consequently, the Department believes that this fee structure will not adversely affect the small business's competitive position. In developing these rules, the Department has balanced the need to protect the public from unnecessary radiation due to radon and its decay products against the economic impact and compliance requirements of the rules and has determined that to minimize the impact of the rules would endanger the environment, health and public safety and, therefore, no exemption from coverage is provided.

Full text of the proposal follows:

SUBCHAPTER 27. CERTIFICATION OF RADON TESTERS AND MITIGATORS

7:28-27.1 Scope

This subchapter establishes rules, requirements and procedures that a person who wishes to perform radon testing or mitigation in New Jersey shall comply with in order to become and remain certified. Certification is mandatory in New Jersey pursuant to N.J.S.A. 26:2D-70 et seq. for any person who sells radon/radon progeny devices, tests for radon/radon progeny or mitigates radon in buildings. Mitigation devices that reduce only radon progeny levels will not be certified under this subchapter. Any person not certified and performing radon services shall be subject to the criminal penalties in N.J.S.A. 26:2D-77.

7:28-27.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Radiation Protection Act, N.J.S.A. 26:2D-1 et seq.

"Applicant" means any person who applies for certification.

"Authorized measurement protocols" means, for radon measurements in air, the "Interim Indoor Radon and Radon Decay Product Measurement Protocols", E.P.A. 520/1-86-04, amendments thereto, or its latest revision; and "Interim Protocols for Screening and Follow-up Radon and Radon Decay Product Measurements", EPA 520/1-86-014-1; page 4 and 13, and 15.

"Authorized proficiency program" means the United States Environmental Protection Agency Radon/Radon Progeny Measurement and Proficiency Program, at the Eastern Environmental Radiation Facility, Montgomery Alabama 36109 or other program equally stringent and authorized by the Department in accordance with the latest edition of New Jersey Department of Environmental Protection document "New Jersey Radon Measurement Proficiency Program."

"Building" means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing, shelter, enclosure or support of individuals.

"Business day" means any day of the year, exclusive of Saturdays, Sundays, and State of New Jersey holidays.

"Certified radon laboratory" means a radiological laboratory which analyzes samples for the presence of radon and/or radon decay products in a facility separate from the location in which the sample was taken using stationary detection equipment, and holds a current valid certificate issued by the Department pursuant to N.J.A.C. 7:18 for radon analysis.

"Certified person" means a certified radon measurement business, certified radon measurement specialist, certified radon measurement technician, certified radon mitigation business, certified radon mitigation specialist or certified radon mitigation technician as defined in this subchapter.

"Certified radon measurement business" means a commercial business enterprise certified pursuant to this subchapter to sell devices or test for radon and/or radon progeny.

"Certified radon measurement specialist" means a person certified pursuant to this subchapter to perform and evaluate radon and/or radon progeny measurements for a certified radon measurement business.

"Certified radon measurement technician" means a person certified pursuant to this subchapter to perform radon and radon progeny measurement activities.

"Certified radon mitigation business" means a commercial business outlet certified pursuant to this subchapter to design and/or install systems in buildings to mitigate and safeguard against radon contamination.

"Certified radon mitigation specialist" means a person certified pursuant to this subchapter to evaluate diagnostic tests to determine appropriate radon mitigation and safeguard strategies for a building.

"Certified radon mitigation technician" means a person certified pursuant to this subchapter who installs and/or supervises the installation of radon mitigation or safeguard systems in buildings.

"Department" means the New Jersey Department of Environmental Protection.

"Diagnostic tests" means tests performed or procedures used to determine appropriate mitigation methods for a building.

"Effective(ness)" as it applies to mitigation means, a system, material, or procedure which when installed in a building consistently reduces radon levels to or below 4 pCi/l in the lowest lived-in level of the building.

"Mitigate" means to apply materials and/or install systems and materials to reduce radon concentrations in the indoor atmosphere or prevent entry of radon into the indoor atmosphere.

"Person" means and shall include corporations, companies, associations, societies, firms, partnerships, and joint stock companies as well as individuals.

"Picocurie per liter (pCi/l)" means 2.2 disintegrations per minute of radioactive material per liter. It may be used as a measure of the concentration of radon gas in air. One picocurie is equivalent to 10^{-12} Curies.

"Proficiency test" means a test conducted within an authorized proficiency program that a radon measurement business must pass at prescribed times in order to demonstrate its ability to test for radon and/or radon progeny and to become certified and maintain certification.

"Radon" means the radioactive noble gas radon-222.

"Radon progeny" means the short-lived radionuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214 and polonium-214.

"Reciprocal agreement state" means a state, formally recognized by the Department, which has established radon certification requirements and procedures no less stringent than those required by this subchapter and complies with the requirements of N.J.A.C. 7:28-27.23.

"Scope of employment" means acts carried out which are so closely connected with what a servant is employed to do and so fairly and reasonably incidental to it that they may be regarded as methods, even though improper, of carrying out the objectives of the employment and furthering the interest of the employer.

"USEPA" means the United States Environmental Protection Agency.

"Working level (WL)" means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

7:28-27.3 General provisions

(a) Beginning 90 days after the effective date of this subchapter, no person may sell devices, test for, mitigate, or safeguard against the presence of radon in the State of New Jersey unless such person is certified pursuant to this subchapter or has been exempted from certification pursuant to N.J.A.C. 7:28-27.31, or temporarily certified in accordance with the provisions of N.J.A.C. 7:28-27.35.

(b) A certified person shall continuously remain in compliance with the Act and this subchapter.

(c) No certification shall be issued or renewed unless the applicant demonstrates to the Department that the following requirements are met:

1. The applicant is not in violation of the Act or this subchapter and does not have a certification issued by the Department suspended or revoked; and

2. The applicant is capable of performing the activities for which he or she is seeking certification in accordance with the Act and this subchapter.

(d) Any person certified to perform radon measurement and/or mitigation shall only do such measurements and/or mitigations for which the person is certified.

1. Any person certified to perform radon measurement and/or mitigation who does not perform so in accordance with this subchapter shall be subject to the suspension and revocation provisions set forth in N.J.A.C. 7:28-27.25.

(e) A certified person shall conduct his or her activities in accordance with the approved certification and the provisions of the Act, this subchapter, and all other applicable municipal, county, state, and federal regulations and codes.

(f) A certified business shall submit to the Department, in writing, changes in the information provided in the original application including changes in client reporting forms, quality assurance/quality control plans, measurement or mitigation techniques and certified personnel 30 days prior to their use by the certified business. No fee is charged for such application amendments.

(g) A person who wishes to be certified in any or all of the categories described in this subchapter, or if already certified, who wishes to add a category, shall submit an application to the Bureau of Environmental Radiation, Radon Certification Program, New Jersey Department of Environmental Protection, CN 415, Trenton, New Jersey, 08625. A person who wishes to become certified shall submit the appropriate fee to the New Jersey Department of Environmental Protection, Division of Fiscal and Support Services, Bureau of Revenue, CN 402, Trenton, New Jersey 08625, (609) 530-5767 prior to the Department issuing the approved certification.

(h) A person shall be guilty of a crime of the third degree if he or she tests for or mitigates against radon/radon progeny in air unless he or she is certified for activities performed pursuant to N.J.A.C. 7:18 or this subchapter.

(i) Unless otherwise specified, any questions concerning the requirements of this subchapter and requests for application forms should be directed to the Bureau of Environmental Radiation, Radon Certification Program, New Jersey Department of Environmental Protection, CN 415, Trenton, New Jersey 08625, (609) 633-6397.

(j) It is the responsibility of the certified businesses to obtain the appropriate certificates, to maintain certified professionals in employment, to develop the quality assurance/quality control and radiological safety plan required by and in accordance with to N.J.A.C. 7:28-27.33 and N.J.A.C. 7:28-27.34 and to report results of all measurement and/or mitigation activity to the Department.

7:28-27.4 Signatories

(a) All applicants shall, upon submission of initial or renewal applications, sign the following certification on the application forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inac-

curate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (a)1 above shall be signed by the individual seeking certification and the highest ranking individual at the facility with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (a)1i above is the same person as the official required to certify in (a)2i, only the certification in (a)1 need be made. In all other cases, the certifications of (a)1 and 2 shall be completed.

(c) All signatures required by this section shall be notarized.

7:28-27.5 Certification requirements for radon measurement business

(a) A certified radon measurement business shall at all times maintain on staff or retain as a consultant a certified radon measurement specialist.

1. The certified radon measurement specialist shall direct the measurement activities of the measurement business and shall sign and be responsible for the review, approval, and verification of the reports required by this subchapter.

2. The certified radon measurement specialist shall assess quality assurance and quality control measures of the measurement business, evaluate operating procedures, and ensure compliance with State and Federal regulations.

(b) Radon or radon progeny testing may only be performed by certified radon measurement specialists or certified radon measurement technicians.

1. Any person who wishes to test or analyze for radon in water must be certified pursuant to N.J.A.C. 7:18.

(c) The certified radon measurement business shall develop and adhere to a plan of quality assurance and quality control for each type of measurement equipment employed in order to assure the reliability and validity of radon measurements. Such plan shall contain the elements of N.J.A.C. 7:28-27.33, be submitted and approved by the Department and, at a minimum, include the requirements of the authorized measurement protocols.

(d) The certified radon measurement business shall develop and comply with a radiological safety plan designed to keep each employee's exposure to radon and radon progeny as low as reasonably achievable. Such plan shall be submitted and approved by the Department and include the requirements of N.J.A.C. 7:28-27.34.

(e) A certified radon measurement business shall secure the services of a certified radon laboratory certified pursuant to N.J.A.C. 7:18 to analyze samples for the presence and level of radon and/or radon progeny when the analysis requires the use of non-portable equipment in a facility separate from where the sample was taken.

(f) A certified radon measurement business which analyzes samples using non-portable equipment such as carbon canisters, alpha track detectors, or radon progeny integrated sampling units shall also be certified pursuant to N.J.A.C. 7:18.

(g) The use of portable radon or radon progeny measurement equipment such as a continuous radon monitor or a continuous working level monitor, does not require laboratory certification pursuant to N.J.A.C. 7:18.

(h) A certified radon measurement business shall have its Department radon certification number prominently displayed on each measurement device and/or package it utilizes.

(i) A certified radon measurement business shall at all times have on staff a technician who has currently passed the authorized proficiency test required for initial and renewal certification.

1. In the case where a certified radon measurement business loses the services of the technician who passed the proficiency test, the business shall have no more than 45 days to either employ another technician who has passed the most recent proficiency or have a currently employed technician take and pass a proficiency test.

7:28-27.6 Application requirements for a radon measurement business

(a) A person applying for certification as a radon measurement business shall submit the following information on forms provided by the Department:

1. The name, business location, address, and telephone number of the applicant;

2. The applicant's status as a corporation, company, association, society, firm, partnership, joint stock company or sole proprietorship;

3. The name and address of owners, officers, general and limited partners, directors, and principal shareholders;

4. For the persons listed in (a)3 above, the nature of any interest, financial or otherwise, in radon mitigation businesses or services;

5. For corporations, the state of domestic incorporation, and the names and principal places of business of any parent corporations of the applicant;

6. An identification of the type of radon and/or radon progeny measurement equipment for which certification is sought, as defined in the authorized measurement protocols;

7. An identification of the certified radon measurement specialists and certified radon measurement technicians employed by the business as staff members or consultants to be utilized by the applicant;

8. An identification of all instrumentation to be used in radon or radon progeny measurement: by manufacturer, model number, and serial number, or for non-portable measurement equipment, the analytical laboratory name, address, and relevant Department laboratory certification number;

9. Proof of successful completion of a proficiency test for each type of measurement equipment to be offered;

i. This requirement may be met by applicants who have devices such as carbon cannisters, alpha track detectors or other devices analyzed by certified radon laboratories by submitting reports indicating that laboratory's successful completion of proficiency tests.

ii. Businesses which utilize portable instrumentation such as continuous working level monitors and continuous radon monitors shall participate in an authorized proficiency program and demonstrate proficiency for each type of equipment utilized.

iii. If an applicant, which utilizes portable instrumentation, submits proof that he or she has applied to an authorized proficiency program but testing will not be available within six months after he or she applied to the program, then the proficiency requirement is met provisionally, until the applicant takes and passes the next proficiency test, provided the applicant shows proof of at least two equipment/instrument calibrations during the six month period directly prior to applying for certification and all other requirements of this subchapter are fulfilled.

iv. If the applicant takes and does not pass the next proficiency test or does not take the next proficiency test, the provisonal certification is void and he or she must re-apply for certification in accordance with the provisions of this subchapter.

v. If a proficiency test is not available during the provisional period, the final certification will be based on an on-site inspection of the business;

10. A copy of the quality assurance plan specified in N.J.A.C. 7:28-27.33;

11. A copy of the radiological safety plan specified in N.J.A.C. 7:28-27.34; and

12. A copy of all reporting forms used to report results to clients.

7:28-27.7 Certification requirements for a radon mitigation business

(a) The certified radon mitigation business shall employ as a staff member or consultant a certified radon mitigation specialist who shall be responsible for evaluating diagnostic tests in buildings and designing mitigation systems for those buildings.

(b) The certified radon mitigation business shall obtain all necessary permits for installation of mitigation systems from the appropriate construction code enforcing agency or other pertinent authorities prior to initiating any activity requiring the permit.

(c) The certified radon mitigation business shall assure that radon mitigation system installations are performed under the direct supervision of a certified radon mitigation specialist or certified radon mitigation technician.

(d) The certified radon mitigation specialist shall perform a visual inspection and diagnostic tests, as appropriate, prior to system installation to determine the appropriate mitigation system to be installed. Observations and test results made during inspections shall be documented by the specialist.

(e) The certified radon mitigation business shall provide all warranty information on the reduction of the radon level, and the proper functioning of mitigation equipment in writing to clients prior to installation of the system. When a business warrants a system, the warranty shall be honored and the precise coverage shall be explicitly stated in the contract offered to the client.

(f) The certified radon mitigation business shall have each building tested for radon levels before and after mitigation work is performed. Such tests shall be of comparable duration and sufficient type and consistency to allow for comparison of before and after mitigation radon levels, and shall be performed by a certified measurement business. The post mitigation test shall be started no sooner than 12 hours following mitigation.

(g) The mitigation system or material installed shall have been demonstrated to the Department to be effective in reducing radon levels in buildings or water supplies.

(h) The certified radon mitigation business, prior to commencing any work, shall provide the client with written instructions on the operation, maintenance and any adverse effects produced by the operation of the mitigation system including any added energy costs.

1. The certified radon mitigation business shall also affix a statement on the installed equipment. This statement shall disclose the purpose and correct operating and maintenance procedures of the system.

(i) The certified radon mitigation business shall develop and adhere to a radiological safety plan submitted and approved by the Department designed to keep each employee's exposure to radon as low as is reasonably achievable. Such plan shall, at a minimum, include the requirements in N.J.A.C. 7:28-27.34.

7:28-27.8 Application requirements for radon mitigation business

(a) A person applying for certification as a radon mitigation business shall submit the following information on forms provided by the Department:

1. The name, business location, address, and telephone number of the applicant;

2. The applicant's status as a corporation, company, association, society, firm, partnership, joint stock company or sole proprietorship;

3. The names and addresses of owners, officers, general and limited partners, directors, and the principal shareholders;

4. For the persons listed in (a)3 above, the nature of any interests, financial or otherwise, in radon measurement businesses or services;

5. For corporations, the state of domestic incorporation and the names and principal places of business of the parent corporation of any applicant;

6. A description of all mitigation systems offered, and types of diagnostic evaluations performed;

i. Proof that the systems and the diagnostic evaluations offered have been effective in reducing radon levels;

7. An identification of the certified radon mitigation specialists and the certified radon mitigation technicians employed by the business as staff or consultants to be utilized by the business;

8. An identification of the certified radon measurement businesses to be utilized by the certified radon mitigation business to perform radon and/or radon progeny testing prior to and following the radon mitigation;

9. An identification of all procedures and instrumentation used in performing diagnostic tests;

10. A copy of the forms to be used when reporting to the client; and

11. A copy of the radiological safety plan meeting, at a minimum, the requirements specified in N.J.A.C. 7:28-27.34.

7:28-27.9 Certification requirements for radon measurement specialists

(a) Prior to applying for certification as a radon measurement specialist:

1. An applicant shall possess a bachelor's degree from an accredited institution in a natural science or engineering;

2. An applicant shall have at least one year of radiation work experience which includes at least 64 hours of either lectures, briefings, seminars, or laboratory sessions covering basic radiation principles in the following areas:

i. Radiation Physics and Instrumentation;

ii. Radiation Protection;

iii. Radiation Biology; and

iv. Radiation Risk Communication;

3. An applicant shall have at least six months of measurement work experience within the State or in a reciprocal agreement state administering radon and/or radon progeny measurement activities and evaluating the results of radon tests;

4. An applicant shall have successfully completed a course or seminar consisting of at least 24 hours of training approved by the Department, covering radiation with emphasis on radon; and

5. An applicant shall pass a written examination offered or approved by the Department.

(b) Certification as a radon measurement specialist qualifies a person as a certified radon measurement technician.

(c) If a certified radon measurement specialist wishes to function as a measurement business, he or she must be certified as a radon measurement business.

7:28-27.10 Application requirements for a radon measurement specialists

(a) A person applying for certification as a radon measurement specialist shall submit the following information on forms provided by the Department:

1. The name, address, and telephone number of the applicant;

2. Proof, such as a certified true copy of a transcript, showing that he or she holds a bachelor's degree from an accredited institution in a natural science or engineering;

3. Proof of at least one year of radiation work experience;

4. Proof of at least six months of measurement work experience within the State or in a reciprocal agreement state;

5. Proof that he or she has successfully completed a Department approved course with emphasis on radon;

6. Proof of passing a written examination offered or approved by the Department; and

7. A list of all certified radon measurement businesses for which the applicant will be a certified radon measurement specialist.

7:28-27.11 Provisional certification of radon measurement specialists

(a) Provisional certification shall be granted to an applicant fulfilling the requirements specified in N.J.A.C. 7:28-27.10(a)1 through 5 and 7. The applicant shall take and pass the next radon measurement specialist examination offered or approved by the Department and accrue an additional six months of measurement work experience as defined in N.J.A.C. 7:28-27.9(a)3 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the

Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification shall be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.10(a)1, 2, 3, 5, 6 and 7 above. Such provisional certification will allow the applicant to accrue the measurement work experience required by N.J.A.C. 7:28-27.9(a)3. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

7:28-27.12 Certification requirements for radon measurement technicians

(a) Prior to applying for certification as a radon measurement technician:

1. An applicant shall have at least one half year of technical measurement work experience performing radon and/or radon progeny measurements;

2. An applicant shall have successfully completed a Department approved course or seminar consisting of at least 16 hours of training on radiation with emphasis on radon; and

3. An applicant shall pass a written examination offered or approved by the Department.

7:28-27.13 Application requirements for radon measurement technician

(a) A person applying for certification as a radon measurement technician shall submit the following information on forms provided by the Department:

1. The name, address, and telephone number of the applicant;

2. Proof of at least one half year of technical measurement work experience;

3. Proof that he or she has successfully completed a Department approved course or seminar on radiation with emphasis on radon;

4. Proof of passing a written examination offered or approved by the Department; and

5. A list of all the certified radon measurement businesses for which the applicant will be a certified measurement technician.

7:28-27.14 Provisional certification of radon measurement technician

(a) Provisional certification will be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.13(a)1 through 3 and 5. The applicant shall take and pass the next radon measurement technician examination offered or approved by the Department and accrue an additional six months of technical measurement work experience as defined in N.J.A.C. 7:28-27.12(a)1 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification will be granted to those applicants fulfilling the requirements of sections N.J.A.C. 7:28-27.13(a) 1, 3, 4, and 5. Such provisional certification will allow the applicants to accrue the requisite technical measurement work experience required by N.J.A.C. 7:28-27.12(a)1. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

7:28-27.15 Certification requirements for radon mitigation specialists

(a) Prior to applying for certification as a radon mitigation specialist:

1. An applicant shall possess any combination of five years of relevant college education or work experience.

i. Relevant college education means a curriculum in architecture, or civil or mechanical engineering.

ii. Relevant work experience means the design, construction and renovation of buildings, and associated heating, ventilation, and air conditioning systems;

2. An applicant shall have at least six months of mitigation work experience performing and/or evaluating radon and/or radon progeny diagnostic tests made in a building, soil or water and designing mitigation systems;

3. An applicant shall have successfully completed a Department approved course or seminar consisting of at least 24 hours of training on radon diagnosis and mitigation; and

4. An applicant shall pass a written examination offered or approved by the Department.

(b) If a certified radon mitigation specialist wishes to function as a radon mitigation business he or she must be certified as a radon mitigation business.

(c) Certification as a radon mitigation specialist qualifies an individual as a certified radon mitigation technician.

7:28-27.16 Application requirements for radon mitigation specialists

(a) A person applying for certification as a radon mitigation specialist shall submit the following information on forms provided by the Department:

1. The name, address, and telephone number of the applicant;

2. Proof of any combination of five years of relevant college education or work experience;

3. Proof of at least six months of mitigation work experience;

4. Proof which satisfactorily demonstrates to the Department that evaluation procedures and mitigation systems, described in N.J.A.C. 7:28-27.15(a)1 and 2 above, have been effective;

5. Proof of successful completion of a Department approved course on radon diagnosis and mitigation; and

6. Proof of passing a written examination offered or approved by the Department.

7:28-27.17 Provisional certification of radon mitigation specialists

(a) Provisional certification shall be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.16(a)1 through 5. The applicant shall take and pass the next radon mitigation specialist examination offered and accrue an additional six months of mitigation work experience as defined in N.J.A.C. 7:28-27.15(a)2 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification shall be granted to those applicants fulfilling the requirements specified in N.J.A.C. 7:28-27.16(a)1, 2, 5 and 6. Such certification will allow the applicant to accrue the requisite mitigation work experience specified in N.J.A.C. 7:28-27.15(a)2. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

7:28-27.18 Certification requirements for radon mitigation technicians

(a) Prior to applying for certification as a radon mitigation technician:

1. An applicant shall have at least two years experience in the building or construction trades;

2. An applicant shall have at least one half year of technical mitigation work experience installing radon mitigation systems;

3. An applicant shall have successfully completed a Department approved course or seminar consisting of at least 16 hours of training with emphasis on radon mitigation; and

4. An applicant shall have passed a written examination offered or approved by the Department.

7:28-27.19 Application requirements for radon mitigation technicians

(a) A person applying for certification as a radon mitigation technician shall submit the following information on forms provided by the Department:

1. The name, address and telephone number of the applicant;

2. Proof of at least two years of experience in the building or construction trades;

3. Proof of at least one half year of technical mitigation work experience;

4. Proof of successful completion of a Department approved course or seminar consisting of at least 16 hours of training with emphasis on radon mitigation; and

5. Proof of passing a written examination offered or approved by the Department.

7:28-27.20 Provisional certification of radon mitigation technicians

(a) Provisional certification shall be granted by the Department to an applicant fulfilling the requirements specified in N.J.A.C. 7:28-27.19(a)1 through 4. The applicant shall take and pass the next certified radon mitigation technician examination offered and accrue an additional six months of technical mitigation work experience as defined in N.J.A.C. 7:28-27.18(a)2 following the examination or the provisional certification becomes null and void. The provisional certification will terminate seven months after the date of the exam unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails an examination required for certification or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

(b) Provisional certification shall be granted by the Department to those applicants fulfilling the requirements in N.J.A.C. 7:28-27.19(a)1, 2, 4 and 5. Such certification will allow the applicant to accrue the requisite technical mitigation work experience required by N.J.A.C. 7:28-27.18(a)2. The provisional certification will terminate seven months after the date of issuance unless the applicant submits proof to the Department in writing that he or she meets all the requirements for certification and requests full certification. The provisional certification may be revoked by the Department if the certified person fails to successfully complete the continuing education courses or violates any of the provisions of the Act, this subchapter or any condition of the provisional certification.

7:28-27.21 Recordkeeping requirements for a certified radon measurement business or a certified radon mitigation business

(a) The certified radon measurement business shall maintain the following records for five years:

1. Records of all radon tests performed including information required in N.J.A.C. 7:28-27.28;

2. Records of all instrument calibration and quality control;

3. Records and results of participation in an authorized proficiency program;

4. Copies of certification for the certified radon measurement specialists and certified radon measurement technicians employed by the business;

5. Copies of the methods and techniques in the authorized measurement protocols used by the certified radon measurement business; and

6. Copies of all applications submitted to the Department and all correspondence between the Department and the certified measurement business.

(b) The certified radon mitigation business shall maintain the following records for five years:

1. Records of all mitigation work performed including, but not limited to, client name, address, diagnostic evaluation results, a brief description of the mitigation system installed, copies of permits required for installation, pre- and post-mitigation radon measurements including method of measurement, all measurement dates, and the names of the certified measurement business and certified measurement specialist responsible for such measurements;

2. Records of mitigation plans developed, utilized, and signed by a certified radon mitigation specialist;

3. Records of all instrument calibration;

4. Copies of all certification applications and all correspondence between the Department and the mitigation business; and

5. Copy of each mitigation contract, including the warranty of equipment installed, signed by the owner of the building mitigated.

7:28-27.22 Renewal of certification

(a) A certification will be valid for one year following the date of issuance. No radon measurement, mitigation, or safeguard activity shall be conducted after the expiration of the term of a certification unless an application for renewal certification has been received by the Department 30 days prior to the expiration date of the certification and is pending approval. If the renewal application is rejected by the Department, no radon measurement, mitigation or safeguard activity may be conducted after receipt by the applicant of notice of rejection.

(b) An application for a renewal certification shall contain all the information required in an initial certification, proof of successful completion of the continuing education requirements for the requested certification and the proper fee.

i. For a certified mitigation business, renewal of certification shall, in addition to the initial application requirements, be based on the effectiveness of the previous years' mitigation systems installed.

ii. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the mitigation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective.

(c) A certified person, in order to maintain his or her certification, shall participate in a continuing education program consisting of courses offered or approved by the Department each certification year. The courses shall be successfully completed during the certification year and shall include the following minimum number of hours of instruction:

1. Sixteen hours for maintaining certification as a radon measurement specialist;

2. Eight hours for maintaining certification as a radon measurement technician;

3. Sixteen hours for maintaining certification as a radon mitigation specialist; and

4. Eight hours for maintaining certification as a radon mitigation technician;

(d) A certified radon measurement business in order to maintain certification, shall participate in an authorized proficiency program and pass one proficiency test each certification year for each type of measurement equipment offered.

1. This requirement may be met by applicants who have charcoal canisters, alpha track detectors or other devices analyzed by certified radon laboratories by submitting reports indicating the laboratory's successful completion of proficiency tests.

2. If there are no proficiency tests available during the certification year for businesses which utilize portable instrumentation, such as continuous working level monitors or continuous radon monitors, the business shall show proof of registration in an authorized proficiency program and proof of at least two equipment instrumentation calibrations during the certification year.

7:28-27.23 Reciprocity

(a) The Department may waive initial certification review where an applicant has previously been certified in another state or territory of the United States of America pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program at least as stringent as New Jersey's.

(b) A New Jersey radon measurement or mitigation certification will be issued pursuant to this section provided the following conditions are satisfied:

1. The Department receives proof of a valid certification from any state or territory which has been officially recognized by the State of New Jersey as having a certification program at least as stringent as New Jersey's and which has signed a reciprocity agreement with the State of New Jersey relating to the reciprocal certification of radon testers and mitigators;

2. The Department receives a complete application from the applicant;

3. The applicant demonstrates to the Department a knowledge of relevant New Jersey radiation and radon laws and rules; and

4. The Department receives all applicable fees.

7:28-27.24 Inspections

(a) The Department and its representatives may enter and inspect any site, building or equipment, or any portion thereof, owned or operated by an applicant or by the certified radon measurement or mitigation business, at any time, in order to ascertain compliance or non-compliance with the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., this subchapter, any certification, or any other agreement or order issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test any equipment at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or applicant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Certified businesses or applicants, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. This assistance includes allowing the Department and its representatives to accompany the certified person while performing any measurement, mitigation, or safeguard activity, at a particular building or property for the purpose of inspection of those activities. During such inspections by the Department, the certified person shall use all sampling and measurement equipment under normal routine operating conditions or under such other conditions as may be requested by the Department. The certified person shall, upon request, make available such sampling and measurement equipment to the Department for the purpose of making comparative measurements.

(c) Upon request, a certified business shall make known to the Department's representatives, the owners, residents, and addresses of properties or buildings where radon measurement, mitigation, or safeguard activities are scheduled, in progress, or completed for the purpose of possible inspection by the Department. This assistance shall also include deploying Department sampling devices alongside the business' device and returning the Department sampling devices to a designated location.

7:28-27.25 Denial, suspension, or revocation of a certification

(a) The Department may refuse to issue a certification or renewal certification to any person who is not in compliance with all of the provisions of the Act or this subchapter.

(b) The Department may suspend a certification for one or all techniques or devices for which a person is certified by reason of amendments to the Act or adoption of rules promulgated pursuant to the Act, or if the person:

1. Violates any requirements of the certification;

2. Violates a statute, rule, or order of the Department;

3. Makes misrepresentations to the Department on any report, record, or application requirement;

4. Fails to comply with any of the requirements of this subchapter;

5. Changes personnel or techniques without disclosure thereof to the Department;

6. Does not pay the applicable fees;

7. Publicly makes false or fraudulent claims or uses "scare tactics" such as exaggerated cancer risks, through any written or verbal communication, or misrepresents the effect of any radon mitigation method utilized;

8. Fails to submit required reports to the Department in a timely manner;

9. Offers or performs tests not in conformance with the authorized measurement protocols;

10. Offers or performs services for which he or she is not certified;

11. Makes false or misleading claims with regard to any products or tests and/or services offered;

12. Records faulty measurements or installs malfunctioning or ineffective mitigation systems;

13. Fails to consistently demonstrate effectiveness of mitigation systems, methods or procedures in reducing radon levels in buildings;

i. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the migitation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective;

14. Does not pass the required proficiency tests;

15. Fails to adhere to the approved quality assurance or radiological safety plan;

16. Fails to grant access to Department employees or agents for inspections; or

17. Does not have on staff, in accordance with N.J.A.C. 7:28-27.5, a technician who has currently passed the proficiency test required for initial or renewal certification.

(c) Suspensions shall be effective immediately upon receipt of the suspension notice by the violator.

1. Suspension notices shall be served by way of certified mail return receipt requested or by personal service.

2. The suspension notice will:

i. Identify the section of the Act, rule, administrative order, or certification violated;

ii. Concisely state the facts which constitute the violation;

iii. Order the violation to cease; and

iv. Specify the duration of the suspension;

(d) A suspension will not be of a duration of more than four months except when all bases for the suspension have not been eliminated or rectified.

1. Specific suspension periods will be determined by the Department according to the severity of the violation.

(e) Suspensions will not be withdrawn until all bases for the suspension have been eliminated or rectified.

1. If the person is suspended for a violation involving faulty measurements, the person shall take and pass a proficiency test before the suspension will be withdrawn.

(f) The Department may revoke a certification upon request submitted by the certified person to the Department.

(g) The Department may revoke a certification in one or all techniques or devices for which a person is certified by reason of amend-

ments to the Act, adoption of rules, pursuant to the Act or suspension notice issued pursuant to the Act or if the applicant:

1. Continues to test and/or mitigate while the person's certification is suspended;

2. Violates a provision of this subchapter for which he has been suspended;

3. Fails to grant access to Department employees or agents for inspections;

4. Demonstrates a pattern of recording faulty measurements or installs malfunctioning mitigation systems or installs mitigation systems which do not consistently demonstrate effectiveness;

i. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the migitation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective;

5. Performs testing or mitigation services not contained in the person's certification;

6. Fails to pass a proficiency test for the requested certification;

7. Endangers the public health, safety and welfare;

8. Operates in such a manner so as to cause harm, injury or damage to persons, property or the environment or poses a significant risk of harm, injury or damage;

9. Aids, abets, combines with, or conspires with any person for any purpose which will evade or be a violation of the provisions of the Act, this subchapter or his or her certification;

10. Does not have on staff, in accordance with N.J.A.C. 7:28-27.5, a technician who has currently passed the proficiency test required for initial or renewal certification; or

11. Commits any of the acts in (b) above authorizing a suspension.

(h) Revocations shall be effective immediately upon receipt of the revocation order by the violator.

1. Revocation orders shall be served via certified mail return receipt requested or by personal service.

2. A recipient may request a hearing on his or her certification revocation within 20 days of receipt of the notice.

3. A revocation order shall:

i. Identify the section of the Act, rule, suspension notice, or certification violated;

ii. Concisely state the facts which constitute the violation;

iii. Order the violation to cease; and

iv. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:28-27.27.

(i) Revocations shall be of a duration of not more than two years unless all bases for the revocation have not been eliminated or rectified.

1. Specific revocation periods will be determined by the Department according to the severity of the violation.

(j) Revocations will not be withdrawn until all bases for the revocation have been eliminated or rectified.

1. A person whose certification has been revoked cannot apply for any certification authorized by this subchapter until the entire revocation period has expired.

2. A person applying for a new certification after his or her certification has been revoked and the revocation period has been completed shall comply with all the provisions of this subchapter in order to receive a new certification.

(k) Upon voluntary or involuntary revocation, a certified person shall immediately surrender his or her certification documents to the Department.

(l) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.

7:28-27.26 Criminal penalties

(a) Any person who violates N.J.S.A. 26:2D-72, 73, or 74 or any rule or regulation adopted pursuant to N.J.S.A. 26:2D-72, 73, or 74 shall be guilty of a crime of the third degree.

(b) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.

7:28-27.27 Request for adjudicatory hearing

(a) Within 20 calendar days from receipt of a certification denial, refusal to renew or revocation issued by the Department pursuant to N.J.A.C. 7:28-27.25, the applicant may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. Name, address, and telephone number of the applicant;

2. Identification of the applicant's certification category, that is, radon measurement business, specialist, or technician or radon mitigation business, specialist, or technician;

3. The applicant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to the contested conditions as well as suggested or revised or alternative conditions;

4. Information supporting the applicant's factual position and proposed conditions and a copy of other written documents relied upon to support the request for a hearing;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request if necessary for a barrier free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the applicant of a certification denial or revocation issued by the Department pursuant to N.J.A.C. 7:28-27.25, shall be denied by the Department.

(c) If the applicant fails to include all of the information required by (a) above, the Department may deny the hearing request.

(d) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:28-27.28 Reporting requirements

(a) A certified radon measurement business shall submit to the Department by the 15th day of each month the results of all radon and radon progeny measurements taken thirty days prior to the 15th day of the current month. Data shall be submitted in the format and the media required by the Department. For each test conducted, this data shall include, but not necessarily be limited to:

1. Name of owner and resident, street address, municipality, county and zip code of location where testing was performed;

2. Block and lot numbers of property tested;

3. The type of equipment used for radon and/or radon decay product testing according to the authorized measurement protocols, media tested, and conditions under which testing was performed;

4. The level or floor of the building where tests were conducted;

5. The results of the test in picocuries/liter (pCi/l) of radon gas or working level (WL) of radon decay products;

6. The date and start and completion times when the test was conducted;

7. The purpose of the test, for example, screening, follow-up, diagnostics, pre-mitigation, post-mitigation; and

8. The certified radon laboratory performing analysis of the sample devices.

(b) The certified radon measurement business shall report test results for radon and radon progeny directly to the owner of the building and the Department. Radon results shall be reported in picocuries per liter (pCi/l), decay product results shall be reported in working levels (WL). The report provided to the owner shall include the following statements:

"This notice is provided to you by an organization or individual certified by the New Jersey Department of Environmental Protection to perform radon and/or radon progeny measurements. N.J.S.A. 26:2D-73 requires that radon measurement data be kept confidential and be sent only to the Department of Environmental Protection or on request, to the Department of Health. Any questions, comments, or complaints regarding the persons performing these measurements, or related mitigation, or safeguarding services should be directed to

the New Jersey Department of Environmental Protection. Attention: Radon Section, Bureau of Environmental Radiation (1-800-648-0394)."

1. Notwithstanding other remedies available to the Department, a person shall be guilty of a crime of the third degree for reporting radon/radon progeny test results to any person other than the owner of the building tested or the Department.

(c) A certified radon measurement business and certified radon mitigation business, prior to any mitigation work, shall provide to each client a copy of the most recent version of the Department's publication titled "Guidance on Performing Screening and Follow-up Measurement Tests."

(d) A certified radon measurement business shall clearly identify to his or her clients the certified radon laboratory used, if any, to analyze the devices. The certified radon measurement business may either send a copy of the original laboratory results to the client or clearly state next to the results reported to the client, the name of the certified radon laboratory and its Department certification number.

(e) A radon mitigation business shall submit to the Department by the 15th day of each month a report on all mitigation work performed during the previous month. Reports shall be submitted on forms provided by the Department and shall include at a minimum:

1. The name and address of the owner and resident of the building in which mitigation work was performed;

2. A description of the mitigation work performed in each building, specifying the type of mitigation systems installed and the date of installation;

3. All pre- and post-mitigation radon and radon progeny test results, test dates, methods of measurements, and level of building on which tests were performed and the name of the certified measurement business performing tests;

4. Copies of all permits required for each mitigation system installed; and

5. The certified radon mitigation business shall include in all mitigation contracts the following statement:

"This notice is provided to you by an organization or individual certified by the New Jersey Department of Environmental Protection to perform radon mitigation or safeguarding services.

At some time in the near future, a representative of the Department of Environmental Protection may contact you to ask your permission to visit your building. The purpose of this visit would be to inspect the recently installed mitigation system.

Any questions, comments or complaints regarding the persons performing these mitigation or safeguarding services should be directed to the New Jersey Department of Environmental Protection, Attention: Radon Projects Section, Bureau of Environmental Radiation (1-800-648-0394)."

(f) The certified radon mitigation business shall include in all mitigation contracts a statement on the possible adverse side effects produced by the operation of the proposed mitigation system. This statement shall include an estimation of the energy costs incurred in operating the system.

7:28-27.29 Liability of certified radon measurement or radon mitigation business for actions of employees

(a) Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any certified radon measurement or radon mitigation business shall be responsible for any violation of the Act committed by an employee in the scope of his or her employment. This responsibility shall be joint and several.

7:28-27.30 Fees

(a) All persons wishing to become certified or renew their certification shall submit to the Department a non-refundable application fee and annual application renewal fee in accordance with Certification Fee Schedule A below.

(b) All persons taking the certification examination shall submit a non-refundable examination fee in accordance with Certification Fee Schedule A below.

(c) All persons taking a course offered by the Department shall submit a non-refundable course fee in accordance with Certification Fee Schedule A below.

(d) In addition to the fees in Schedule A, a program administration fee shall be submitted to the Department by a certified radon measurement business in accordance with Fee Schedule B below.

(e) In addition to the fees in Schedule A, a program administrative fee shall be submitted to the Department by a certified radon mitigation business in accordance with Fee Schedule C below.

(f) Fees specified in (d) and (e) above shall be submitted semi-annually to the Department at the address specified on the certification application.

(g) The above fees shall be used to cover the cost of Department implementation of the certification provisions of this subchapter.

CERTIFICATION FEE SCHEDULE A*

	INITIAL COURSE FEE	CONTINUING ED. COURSE FEE	EXAMINATION FEE	CERTIFICATION APPLICATION FEE	ANNUAL RE-CERTIFICATION FEE	INSPECTION FEE (each inspection)
Radon Measurement Business	N/A	N/A	N/A	400	200	400
Radon Measurement Specialist	200	135	200	150	75	N/A
Radon Measurement Technician	150	50	150	75	50	N/A
Radon Mitigation Business	N/A	N/A	N/A	400	200	400
Radon Mitigation Specialist	200	135	200	150	75	N/A
Radon Mitigation Technician	150	50	150	75	50	N/A

*Fees are in dollars and non-refundable

FEE SCHEDULE B

**Program Administration Fees—Radon Measurement Business

NUMBER OF MEASUREMENT DEVICES EMPLOYED each SEMI-ANNUAL PERIOD*	PROGRAM FEE($)	ACTIVITY FEE($)	TOTAL($)
-0-	447	0	447
1-49	447	49	496
50-99	447	145	592
100-199	447	290	737
200-299	447	484	931
300-499	447	775	1,222
500-999	447	1454	1,901
1000-1999	447	2909	3,356
2000-5000	447	6790	7,237
Greater than 5000	447	9700	10,147

*First Calendar Period: July 1-December 31
Second Calendar Period: January 1-June 30

**The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

FEE SCHEDULE C

**Program Administration Fees—Radon Mitigation Business

NUMBER OF BUILDINGS MITIGATED EACH SEMI-ANNUAL PERIOD*	PROGRAM FEE($)	ACTIVITY FEE($)	TOTAL($)
0	746	0	746
1-10	746	144	890
11-24	746	459	1205
25-49	746	971	1717
50-74	746	1627	2373
75-99	746	2283	3029
100-124	746	2939	3685
125-149	746	3595	4341
150-174	746	4251	4997
175-200	746	4920	5666
Greater than 200	746	5248	5994

*First Calendar Period: July 1-December 31
Second Calendar Period: January 1-June 30

**The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

7:28-27.31 Exemptions

(a) The certification requirements of this subchapter shall not apply to:

1. Those persons testing or mitigating buildings that they own;

2. Those persons performing specific construction tasks under the direct supervision of a certified radon mitigation specialist or certified radon mitigation technician;

3. Those persons who sell or offer for sale at a retail outlet radon measurement devices, such as charcoal canisters, provided that:

i. The radon measurement devices are manufactured or supplied by a certified radon measurement business;

ii. The analysis, result, and interpretation of such tests are performed and sent directly to the purchaser by the certified radon measurement business;

iii. Consultation on radon is provided only by a certified radon measurement business;

iv. Measurement devices are not being placed in buildings to be analyzed by uncertified persons; and

v. The measurement devices are stored and displayed in a manner that maintains their integrity; or

4. Those persons testing for or mitigating radon and/or radon progeny as part of scientific research approved by the Department or as a public service without remuneration approved by the Department.

7:28-27.32 Examinations

(a) All applicants for initial certification shall take and pass a written examination offered by the Department. Examinations will be offered at least three times each calendar year. Examinations will cover, but not be limited to, the following:

1. For certification as a radon measurement specialist:

i. The basic principles of radioactivity, interaction of radiation with matter, units of radiation measurement, biological effects of radiation exposure, radon related detection methods and instrumentation, radon measurement protocols, risk assessment and communication, State or Federal radiation programs, recommendations and guidelines related to radon measurement, diagnostic and mitigation methods, and quality assurance/quality control programs.

2. For certification as a radon measurement technician:

i. The basic principles of radioactivity, interaction of radiation with matter, units of radiation, radon and radon progeny measurement protocols, risk assessment and communication, State and Federal radiation programs, recommendations and guidelines related to radon and radon progeny measurements, diagnostic and mitigation methods, and quality assurance/quality control programs.

3. For certification as a radon mitigation specialist:

i. Radon mitigation diagnostics, mitigation methods, radon transport and entry, follow-up testing procedures, and health effects of radon and radon progeny.

4. For certification as a radon mitigation technician:

i. Radon mitigation methods, construction codes, radon transport and entry into buildings and worker protection and health effects of radon exposure.

7:28-27.33 Elements of quality assurance plans

(a) Those firms wishing to obtain certification in New Jersey in the radon measurement business category shall prepare and submit quality assurance/quality control (QA/QC) plans for radon testing services offered to the public to the Department. The plans shall contain the following information as it pertains to the activities of the business:

1. A title page including:

i. The title of the document—Quality Assurance/Quality Control Plan for Radon Measurement;

ii. The authors' names;

iii. The authors' organization;

iv. The business name and address; and

v. The month and year the document was prepared.

2. A table of contents;

3. A description of the business' organization and lines of responsibility including:

i. If the firm has more than five employees, a chart or figure showing the firm's organization and line of authority;

ii. The designation of persons performing quality assurance functions and their relationship to the firm's management structure;

iii. The names of the firm's certified radon measurement specialists;

iv. The names of the firm's certified radon measurement technicians; and

v. The names of other key individuals responsible for analysis, or data assessment;

4. A description of sampling procedures for each type of measurement equipment for which certification is being sought to include:

i. Deployment procedures, including the desirable locations at which devices are to be placed;

ii. The environmental conditions desired during the test period;

iii. Equipment operation procedures;

iv. Copies of instructions to clients if testing devices are mailed;

v. The test period in days, hours, months, etc; and

vi. The procedures used by the firm to ensure that technicians understand and follow the procedures;

5. If the radon measurement business is or works with a certified radon laboratory, the sampling procedures described shall coincide with the laboratory quality assurance/quality control requirements, for example, for duplicate analysis:

i. References can be made to the authorized measurement protocols and copies of these need not be included;

6. A description of sample tracking/chain of custody procedures used to track detector receipt, and delivery between the business and the certified radon laboratory as appropriate, including:

i. The names and duties of the detector custodians who sign for incoming field samples and verify the entry of pertinent information into custody records;

ii. The data tracking information required to be entered on the businesses' tracking forms; and

iii. Samples of tracking forms;

7. Analytical procedures for portable instruments to include, for each radon/radon progeny testing method for which the business performs analysis of samples, a list of instrument procedures and calculations used, and the equipment used;

8. A description of procedures for calibration and maintenance of portable instruments including:

i. The calibration equipment and procedures used for both pumps and measurement equipment, and formulas for calculating calibration factors;

ii. The frequency at which calibrations of each piece of equipment, both pumps and measurement, are performed shall be given. Said calibrations of equipment, both pumps and measurement, shall occur at least twice a year;

iii. The calibration standards or sources used and their traceability. Include whether calibrations are performed in a radon chamber and/or by other methods; and

iv. Equipment maintenance procedures;

9. A description of internal quality control procedures for portable instruments;

10. Data reduction and reporting procedures including:

i. The data reduction scheme planned for all analytical data from portable instruments;

ii. Methods used to identify and treat anomalous data; and

iii. The names or positions of key individuals who will handle data and be responsible for reporting results to clients and maintaining appropriate confidentiality;

11. Corrective action procedures including:

i. The predetermined limits for data acceptability beyond which corrective action is necessary;

ii. The corrective action to be taken; and

iii. The names or positions of individuals responsible for initiating and approving the corrective actions; and

12. A brief description of the quality assurance reports that will be submitted to the businesses' management including:

i. The periodic assessment of measurement accuracy and precision;

ii. Results of intercomparisons and calibrations;

iii. The results of any internal or external audits; and

iv. All significant quality assurance/quality control problems encountered and recommended solutions.

7:28-27.34 Minimum requirements for radiological safety plans

(a) All new employees or consultants of a certified radon measurement business or certified radon mitigation business who will be entering structures with unknown radon levels or radon levels above four picocuries per liter (pCi/l) for purposes of radon or radon progeny measurement, or designing, installing or repairing radon mitigation systems shall be instructed by the certified radon measurement specialist or certified radon mitigation specialist of the business on proper radiation safety practices prior to entering such a structure, in accordance with the businesses' radiological safety plan. Each new employee shall be required to take and pass a test on radiation safety developed by the certified radon measurement or certified radon mitigation specialist. The passing level of the test shall be determined by the certified radon measurement or mitigation specialist.

(b) The certified radon measurement or certified radon mitigation business is responsible for the radiological safety of all their employees.

(c) Refresher radiation safety training of workers shall be conducted at a minimum of once annually.

(d) At a minimum, the practices identified below shall be followed by all radon testers and mitigation workers entering buildings where the radon level is unknown or above 4 pCi/l.

1. For radon testing:

i. Limit the amount of time spent in elevated radon areas, for example, basements, crawl spaces;

ii. Respond to questions or concerns of clients in a low radon area, for example, upper floors or patios during field visits;

iii. Analyze samples in a low radon area. An exception would be those cases in which continuous real time monitoring is used to monitor mitigation system performance or to alert workers to the presence of high radon levels; and

iv. Calibrate/set up radon testing equipment prior to entering an elevated radon area.

2. For radon mitigation work:

i. The pre-mitigation radon test result from the building in which a mitigation system is being installed shall be made known to all mitigation workers by the certified radon mitigation specialist prior to beginning mitigation work. The radon or radon progeny level from this test shall be entered on the Radon Exposure Tracking Form specified in (n) below;

ii. Building areas where mitigation work is being performed shall be ventilated during the work period to the extent practicable;

iii. The time spent in areas with potentially high radon concentrations, for example, crawl spaces, and other confined spaces should be limited, to the extent consistent with performing diagnostic work;

iv. Work breaks/lunches shall not be taken in elevated radon areas;

v. Exhaust gases from subslab suction systems shall be vented outdoors, preferably above roof eaves and away from potentially occupied areas;

vi. Only the number of persons necessary to carry out mitigation work shall be present in the building being mitigated; and

vii. Smoking by employees shall not be permitted in buildings being mitigated.

(e) Each certified radon measurement and mitigation specialist and technician shall track their exposure to radon progeny if a potential for exposure exceeds one working level month per year (WLM/year). This may be done by wearing a passive long term, meaning greater than three months, radon detector during work periods or keeping records in accordance with the Radon Exposure Tracking Form set forth in (n) below.

(f) The certified radon mitigation specialist or certified radon measurement specialist shall be responsible for tracking exposures of workers utilized by the business if there is potential for exceeding one WLM/year exposure.

(g) The certified radon mitigation specialist or certified radon measurement specialist shall review exposures on a quarterly basis and compute estimated exposures for each person cited in (e) and (f) above. Annual cumulative exposures shall also be estimated.

(h) Individual workers with estimated work related exposures exceeding two WLM/year shall not be assigned mitigation work in higher radon level buildings on a continuing basis.

(i) The certified radon mitigation specialist shall notify workers in writing of estimated exposures quarterly. At any time when estimated exposure of a worker could potentially exceed four WLM/year, an investigation shall be conducted and actions shall be taken to reduce exposure to the worker.

(j) No employee shall be permitted to receive exposure from inhalation of radon progeny in excess of four WLM/year in one calendar year.

(k) Exposure records shall be maintained by the business for each worker exposed to elevated radon levels, on a continuing basis. Cumulative exposures for each quarter and each year of employment shall be recorded.

(l) Records of worker radiation safety training and annual refresher courses shall be maintained by the business during and at least one year after the employee terminates his or her employment. These records shall include date of training, instructor, length of session, and topics covered.

(o) RADON EXPOSURE TRACKING FORM

DATE OF MEASUREMENT	RADON/RADON PROGENY LEVEL (pCi/l or WL)	DATE OF EXPOSURE	TIME EXPOSED (HRS)	VENTILATION CONDITIONS DURING EXPOSURE (windows open/ fan/closed house)

7:28-27.35 Temporary certification

(a) The Department may allow for a radon measurement business, N.J.A.C. 7:28-27.5 and 6, and a radon mitigation business, N.J.A.C. 7:28-27.8 and 9, a temporary certification for up to one year if that business is listed, as of January 1, 1990, on the Department's list of approved radon testing and mitigation firms and the firm submits a complete application for certification within 90 days of the effective date of this subchapter.

(b) The period of temporary certification shall extend for one year, or until the Department completes its review of the application and approves or denies a certification or provisional certification in accordance with the requirements of this subchapter, whichever occurs sooner.

(c) To receive a temporary certification pursuant to (a) above, an applicant must agree, in writing, to cease any radon measurement or mitigation activity without prior hearing if so instructed by the Department at any time during the period of temporary certification. The applicant must further acknowledge its understanding that this temporary certification confers on it no permanent rights to operate a radon measurement or mitigation business and agrees to cease any radon measurement or mitigation activity upon expiration of the temporary certification or when the application for full or provisional certification is denied.

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan Proposed Amendments: N.J.A.C. 7:50

Authorized By: New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.
Authority: N.J.S.A. 13:18A-6j.
Proposal Number: PRN 1989-589.

A **public hearing** concerning the proposed amendments will be held on:
Friday, December 1, 1989 at 10:00 A.M.
Cranberry Hall
Charles Street
Medford, N.J.

Submit written comments by December 6, 1989 to:
John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, N.J. 08064

The agency proposal follows:

Summary

The Pinelands Commission proposes to amend portions of N.J.A.C. 7:50 to address several different topics.

Several additions to N.J.A.C. 7:50-4 are proposed. N.J.A.C. 7:50-4.2(c)1 would be revised so that applicants who are alleged to have an outstanding violation may request an administrative hearing if they wish to contest the Executive Director's finding that a violation exists. The language in this section is being amended to clarify the Commission's original intention that no application, except a complete application to resolve a violation, is to be deemed complete if there is an outstanding violation on the parcel. A proposed addition to N.J.A.C. 7:50-4.3(b)2i(5) specifies notice for a public hearing involving certification of a county or municipal master plan or land use ordinance. A proposed addition at N.J.A.C. 7:50-4.5 would allow the Executive Director to exempt projects from the normal application procedures if the Executive Director determines that a public health, safety, or welfare problem exists. Notice requirements in N.J.A.C. 7:50-4.53 are revised to modify the obligation of public agencies to provide notice to the public concerning applications for treatment of publicly owned lakes with herbicides.

A proposed change to N.J.A.C. 7:50-5.2(b) would clarify that provisions allowing a change of an existing non-conforming use to another equivalent non-conforming use apply only if the original use has not been abandoned. Proposed changes to N.J.A.C. 7:50-5.24(a)2 would add a provision that clarifies that only one lot at a time may be created pursuant to provisions for dwellings accessory to an active agricultural operation.

Proposed additions to N.J.A.C. 7:50-5.23 and 7:50-5.24 would permit the expansion of certain airports in existence in the Forest Area or Agricultural Production Area on January 14, 1981. N.J.A.C. 7:50-5.2 enables municipalities to permit 50 percent expansion of such pre-existing uses. The proposed amendment would allow slightly more flexibility in determining allowable increases in airports which existed prior to January 14, 1981.

The Pinelands Commission proposes to amend portions of N.J.A.C. 7:50-5.28(a)1, the paragraph of the Pinelands Comprehensive Management Plan (CMP) which specifies average residential densities on vacant developable land in Pinelands Regional Growth Areas. The proposed amendment would lower the average residential density by 25 percent in the Regional Growth Areas of three municipalities: Chesilhurst Borough, Waterford Township, and Winslow Township. Several documents are relevant to this amendment:

- This change has the purpose of protecting fragile water dependent environmental resources from the effects of groundwater withdrawal, water loss through consumptive use, and loss to the watershed through interbasin transfer of sewage. The importance of water in Pinelands environments was examined by expert panel in the Commission's previously published report, The Ecological Implications of Exporting Water From the Cohansey Aquifer.
- The Pinelands Comprehensive Management Plan identifies certain areas as Regional Growth Areas, which are areas within the Pinelands that are most suitable for development, and where most future growth and development should take place. The intensity of development within Regional Growth Areas in Camden County is such that centralized sewage treatment is appropriate. The potential impacts of current zoning, water supply, and sewer plans was the subject of a Commission staff technical study, the findings of which were published in the report, An Assessment of Sewer and Water Supply Alternatives for Pinelands Growth Areas in the Mullica River Basin, Camden County (May 1988). The report concludes that current zoning and sewer plans could have unacceptable negative environmental impacts, but that with careful planning and reduction in total zoning capacity, impacts can be controlled to acceptable levels.
- On July 8, 1988, the Pinelands Commission adopted Resolution 88-65, Setting Forth Pinelands Commission Policies for Sewer and Water Supply Planning Within the Mullica River Basin, Camden County. Among the policies embodied in the Resolution is the reduction in future zone capacities within Regional Growth Areas of Winslow, Waterford and Chesilhurst, via municipal adoption of amendments to zoning ordinances. The proposed amendment of the Comprehensive Management Plan is the next step in the conformance process leading to these zoning amendments.

N.J.A.C. 7:50-5.28(a)1xxx(1) is proposed for deletion to eliminate redundancy; the same language is included in N.J.A.C. 7:50-5.28(a)2, so no substantive change would result.

Additional amendments modify the Pinelands Development Credit (PDC) Program (N.J.A.C. 7:50-5, Part IV). These amendments culminate a two year review of the PDC program by the Commission. These amendments will (1) require the purchase of PDCs in certain cases where nonresidential use is permitted by variance in a residential zone (Note: the CMP already requires PDC use when residential use is permitted by variance in a nonresidential zone); (2) simplify the calculation of PDC allocation by reducing PDC allocation by .25 PDC for each existing dwelling unit and each retained right to build a dwelling unit; (3) reduce the PDC allotment for all existing dwellings or retained right to build, whether or not the dwelling is farm related; and (4) require use of PDCs for all dwelling units, including fractional units, approved in excess of the base density specified in a certified municipal zoning ordinance.

N.J.A.C. 7:50-6.65 is proposed for deletion to eliminate redundancy; these provisions are included in N.J.A.C. 7:50-4.2, so no substantive change would result.

N.J.A.C. 7:50-6.154 has been modified so that a historic resource will be designated significant by the Pinelands Commission if it is designated for either the State or National Register of Historic Places. As previously drafted, this appeared to require designation in both registers.

N.J.A.C. 7:50-6.156 specifies that when a certificate of appropriateness does not result in designation as a significant resource within one year, the provisions of N.J.A.C. 7:50-6 Part XV shall not apply. This has been modified so that the exemption applies only to the development in question, and not the entire property. This is because, in the case of certain large properties, the exemption could be inadvertently and unintentionally applied to additional historic resources. The revised provision implements the original intent of the rule.

Additional minor changes have been proposed to various parts to correct minor typographical errors, correct lettering of subsections, and improve stylistic consistency with no change of substance.

Social Impact

The planning boards and governing bodies of the three affected municipalities will be required to respond to the density related amendment by reviewing and amending their master plans and zoning ordinances to accommodate the reduced average densities. Subsequent to adoption of revised zoning ordinances by municipalities, landowners and developers will be required to be aware of and to abide by the revised zoning ordinances.

The reduction in zone density may have the effect of reducing the potential future supply of new housing and business development; however, it paves the way for centralized sewer service to be provided. Without central sewer service, the actual development potential of these areas would be substantially less than currently permitted since the use of on-site waste water systems limits residential densities to one home for every acre of land.

The changes to N.J.A.C. 7:50-4 provide greater flexibility and may reduce the burden of regulatory compliance for some applicants.

Changes related to the PDC program clarify existing policy, refine certain policies so as to make them more consistent and fair in application. Certain changes to the PDC program are intended to improve the functioning of the program; these may result in greater or earlier economic return to certain owners of land where PDCs are allocated.

Other changes clarify and/or return the regulations to the original intent of the CMP, and thus have no new social impact.

Economic Impact

The economic impact of the proposed amendments is expected to be minimal. The maximum permitted number of housing units that may be constructed in the affected municipalities will be reduced. While this will reduce the overall future housing resource in the area, it is projected that significant excess development capacity exists. Further, despite the density reduction embodied in this amendment, the affected areas continue to be Pinelands Regional Growth Areas, and may be eligible for grant and loan funding through the Pinelands Infrastructure Trust to provide centralized sewer service.

Reduced density may be expected to slightly reduce the price paid for vacant land compared to the price that might be paid if density were not reduced. The impact of the amendment on individual landowners will depend on individual municipal implementation decisions regarding higher and lower density zones which achieve the required average.

Changes to the Pinelands Development Credit program may result in somewhat greater use of the Credit program. This may slightly increase development costs, and subsequently increase profits, for some applicants in Regional Growth Areas, while reducing the impact of regulation for some landowners who are allocated Pinelands Development Credits. This is consistent with the intent of the Pinelands Development Credit Program. Reductions in PDC entitlement for existing farm related housing or retained right to build same will reduce the economic return to some landowners; however, this provision is now consistent in its treatment of landowners and residences, and is also consistent with the intent of the CMP that PDC entitlement be provided where future land use is restricted to uses having minimal negative impacts on the resources of the Pinelands.

The emergency provision proposed at N.J.A.C. 7:50-4.5 may result in certain cost savings to applicants if delays would otherwise escalate the costs of remedying the health or safety problem.

The other changes have no economic impact.

Environmental Impact

The proposed amendments will protect fragile water dependent components of the Pinelands environment in portions of the upper Mullica River watershed, especially Wharton State Forest, from negative impacts of excessive water withdrawal, interbasin transfer of water, and pollution from sewage treatment facilities.

The modifications to the PDC program may be expected to increase the use of the PDC program, which will result in permanent protection of land from which PDCs originate through the recordation of permanent easements restricting the future use of the land. The reduction in PDC entitlement for farm related residences may result in fewer such residences being constructed and therefore reduce negative impacts of residential construction.

The two additions to N.J.A.C. 7:50-4 will not have any environmental impact since the substantive standards of the Plan will not be changed and no reduction in protection of Pinelands resources will result.

The other changes are clarifying in nature, and may better protect the environment by ensuring the intent of the CMP is met.

Regulatory Flexibility Analysis

The proposed amendments impose no new reporting requirements affecting any businesses. An unknown but small number of small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may be required to purchase PDCs if they propose to establish a nonresidential land use in a residential zone. While this will increase the cost of construction marginally, it should be noted that this will only happen where the effect of a municipality approved zoning variance is to destroy PDC redemption opportunities included in the certified zoning ordinance pursuant to the CMP's standards for certification of municipal master plans and zoning ordinances. The provision is necessary to avoid a negative effect on the PDC program.

Businesses involved in land development or land development planning and design will be required to work within the limitations of revised zoning ordinances. This is central to the nature of their business, however, and does not represent an additional burden.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

"Accessory structure or use" means a structure or use which:

1. Is subordinate to and serves a principal building or a principal use, including, but not limited to, the production, harvesting, and storage as well as washing, grading and packaging of unprocessed produce grown on-site; **and**

2.-4. (No change.)

. . .

"Parcel" means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, and which is [designed] **designated** by its owner as land to be used as a unit.

. . .

"Subdivision" means the division of a parcel of land into two or more lots, tracts, parcels or other divisions of land. The following shall not be considered subdivisions within the meaning of this Plan, if no development occurs or is proposed in connection therewith:

1. Divisions of property by testamentary or [interstate] **intestate** provisions;

2. Divisions of property upon court order; and
3. Conveyances so as to combine existing lots by deed or other instrument.

. . .

7:50-4.2 Pre-application conference; application requirements
(a) (No change.)
(b) Application requirements.
1.-6. (No change.)
7. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:
i.-vii. (No change.)
viii. A [reclamation] **restoration** plan which includes:
(1)-(7) (No change.)
ix.-x. (No change.)
8.-10. (No change.)
(c) Determination of whether application is complete.
1. Determination by Executive Director:
i. Within 30 days following receipt of any application or any additional information concerning an application filed pursuant to this Plan except as provided in N.J.A.C. 7:50-4.34(b), the Executive Director shall determine whether such application is complete. If he determines that the application is not complete, he shall mail a written statement to the applicant specifying the deficiencies of the application. The Executive Director shall take no further action on the application until the deficiencies are remedied.
ii. Except for a completed application made pursuant to provisions of the subchapter which is exclusively to resolve an outstanding violation, [No] **no** application shall be deemed complete by the Executive Director if there are outstanding unresolved violations of this Plan on the parcel which is the subject of the application [unless the application is made to resolve such a violation]. **Where no application made exclusively to resolve a violation has been completed, a violation shall be deemed to be unresolved until such time as the violator has specifically agreed in writing to take all measures that have been specified by the Executive Director as being necessary to eliminate the violation in a time period acceptable to the Executive Director.**
iii. Any applicant who is aggrieved by any determination by the Executive Director pursuant to (c)1ii above may within 15 days of that determination seek reconsideration of the Executive Director's determination by the Commission as provided by N.J.A.C. 7:50-4.91.
2.-3. (No change.)

7:50-4.3 Commission hearing procedures
(a) (No change.)
(b) Notice of public hearing.
1. (No change.)
2. Persons entitled to notice:
i. Notice of public hearing shall be given by the Commission:
(1)-(4) (No change.)
(5) If the public hearing involves certification of a county or municipal master plan or municipal land use ordinance or county development ordinance, by publication of a copy of the notice, at least once, in an official newspaper of the Pinelands Commission having general circulation in the area.
ii. (No change.)
3. Time of notice: All notices required by (b)[3]**2** shall be published, posted or mailed at least 10 days in advance of the hearing.
4. (No change.)
(c) (No change.)

7:50-4.5 Emergency provision

Notwithstanding any other provisions of this subchapter, in any case where the Executive Director determines that immediate action pursuant to this plan is necessary to remedy or prevent a condition that is dangerous to life, health or safety, the Executive Director may, after consultation with the Commission Chairman, pursuant to such a finding, perform whatever action is minimally necessary to remedy or prevent the danger to life, health or safety. The Executive Director shall inform the Commission of any action taken pursuant to this provision at its next regularly scheduled meeting. Should action by the Commission be necessary, the Commission may take such action as it deems appropriate.

[7:50-4.5 through 7:50-4.10 (Reserved)]

7:50-4.6 through 7:50-4.10 (Reserved)

7:50-4.53 Pre-application conference and submission requirements
(a)-(c) (No change.)
(d) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11, which **either is for chemical control of vegetation in a water body where no permanent alteration of the water table is proposed or** will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for public development as follows:
1.-2. (No change.)
(e) through (h) (No change.)

7:50-4.62 Application
(a) An application for a waiver shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b). An application for waiver may be filed prior to filing an application for development. If during review of an application for development it appears necessary to obtain a waiver, the applicant may apply for a waiver[; such]. **Any** application **for a waiver** shall stay the time period for review set forth in Parts II, III or IV of this subchapter as the case may be **while the application for the waiver is pending.**
(b) through (g) (No change.)

7:50-4.66 Standards
(a) An application for a waiver shall be approved only if the applicant satisfies (b) below and an extraordinary hardship or compelling public need is determined to have been established under the following standards:
1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to meet the minimum lot size requirements or management standards of this Plan shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no contiguous land which is reasonably available. Any contiguous lands in common ownership at any time on or after January 14, 1981, shall be considered to be reasonably available. An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, that the subject property, along with any contiguous lands in common ownership [of] **or** which are reasonably available, does not have any beneficial use if used for its present use or developed as authorized by the provisions of this Plan, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:
i. through iii. (No change.)
2. (No change.)
(b) and (c) (No change.)

7:50-5.2 Expansion of existing uses
(a) (No change.)
(b) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any lawful use existing on January 14, 1981**, and not subsequently abandoned**, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:
1.-2. (No change.)
(c) (No change.)

7:50-5.13 Goals and objectives of Pinelands Management Areas
(a) through (e) (No change.)
(f) Pinelands Villages and Towns are existing spatially discrete settlements in the Pinelands. These traditional communities are appropriate for infill residential, commercial and industrial development that is compatible with their existing character.

1. Pinelands Area Villages are:
i. through xliv. (No change.)
xlv. Vincentown;
Recodify existing xlv. through xlviii. as **xlvi. through xlix.** (No change in text.)
2. through 4. (No change.)
(g)-(h) (No change.)

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

(a) (No change.)
(b) In addition to uses permitted under (a) above, municipality may, at its option, permit the following uses in a Forest Area:
1. through 15. (No change.)
16. Airport facilities provided:
i. The airport is publicly owned or serves a Pinelands Town; and
ii. The airport was in existence on January 14, 1981; and
iii. The area of the airport is limited in size to that which existed on January 14, 1981; and
iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District or Special Agricultural Production Area.
(c) and (d) (No change.)

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in Agricultural Production Areas

(a) The following uses shall be permitted in an Agricultural Production Area:
1. Residential dwellings on lots of 3.2 acres in accord with N.J.A.C. 7:50-5.32.
2. Residential dwelling units not to exceed a gross density of one unit per 10 acres provided that:
i.-iii. (No change.)
iv. The dwelling is located on a lot which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area; [and]
v. A residential lot has not been subdivided from the property within the previous five years[.] **unless the lot has been subdivided pursuant to N.J.A.C. 7:50-5.32; and**
vi. No more than one lot may be created for a dwelling accessory to an active agricultural operation pursuant to this provision at any one time.
3. through 9. (No change.)
(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:
1. through 12. (No change.)
13. Airport facilities provided:
i. The airport is publicly owned or serves a Pinelands Town; and
ii. The airport was in existence on January 14, 1981; and
iii. The area of the airport is limited in size to that which existed on January 14, 1981; and
iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District, Special Agricultural Production Area or Agricultural Production Area.

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use may be permitted in a Regional Growth Area, provided that:
1. Except as provided in (a)2, 3, 4, 5 and 6 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a Regional Growth Area shall be equal to and not exceed the following density per acre of developable land:
i. through v. (No change.)
vi. In Chesilhurst Borough: [1.5] **1.125** dwelling units per acre.
vii. through xxviii. (No change.)
xxix. In Waterford Township [3.0] **2.25** dwelling units per acre;
xxx. In Winslow Township [1.5] **1.125** dwelling units per acre.

[(1) For purposes of this section, developable lands are those privately held, non-wetland lands with a depth to seasonal high water table of greater than five feet. Where sewer systems are available, soils with a depth to seasonal high water table exceeding 1.5 feet may also be considered developable.]
2. (No change.)
3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities provided that the total amount of residential development permitted in (a)1 above, is exceeded by at least 50 percent; that a reasonable proportion of the density increase permits the development of single family detached residences; and that the residentially zoned districts in which the ranges are established are [reasonable] **reasonably** expected to be developed within the assigned density ranges.
i. (No change.)
ii. Municipal master plans or land use ordinances shall provide that development at a density which is greater than the lowest density in each range can be carried out if the increase in density is achieved through a density bonus for use of Pinelands Development Credits[; provided, however, that no Pinelands Development Credits will be required for fractions of a residential unit of 50 percent or less].
4. Any **local variance for an approval of** residential development approved [by variance] at a density which exceeds the maximum permitted in that zone shall require that Pinelands Development Credits be used for all dwelling units which exceed the maximum otherwise permitted.
5. Any **local variance for an approval of** residential development approved [by municipal variance] in a zone in which residential development is not otherwise permitted shall require that Pinelands Development Credits be used for all dwelling units in such development.
6. Any local variance for an approval of nonresidential development in a zone in which nonresidential development is not otherwise permitted, and in which density may be increased through use of Pinelands Development Credits pursuant to (a)3ii above, shall require that Pinelands Development Credits be used at the maximum rate permitted for the zone in which the development is located.
[6.]7. (No change in text.)
(b) (No change.)

7:50-5.43 Pinelands Development Credits established

(a) (No change.)
(b) Pinelands Development Credits are hereby established at the following ratios:
1.-2. (No change.)
3. The allocations established in (b)1 and 2 above shall be reduced as follows:
[i. No property of 10 acres or less which is improved with a residence as of January 14, 1981 or developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall receive a Pinelands Development Credit entitlement and such an improved property greater than 10 acres in size shall only be entitled to Pinelands Development Credits for that portion of the property not actively used for such use or 10 acres, whichever is greater; and]
i. Any property of 10 acres or less which is developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall not receive Pinelands Development Credit entitlement. For such an improved property of more than 10 acres, the area actively used for such use or 10 acres, whichever is greater, shall not receive Pinelands Development Credit entitlement.
[ii. Properties developed for residential use in accordance with the standards of this Plan shall not receive a Pinelands Development Credit entitlement for the lot area required for the residence, except that the development of farm related housing in accordance with N.J.A.C. 7:50-5.24(a)2 shall not reduce the Pinelands Development Credit entitlement otherwise attributable to the entire property.]
ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the property.

iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the property pursuant to N.J.A.C. 7:50-5.44(b).

4. [The] **If the** allocations established in (b)1 and 2 above **are less than one-quarter of a Pinelands Development Credit, the allocation** shall be increased to [at least] one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on February 7, 1979.

(c) (No change.)

7:50-5.44 Limitations on use of Pinelands Development Credits

(a) (No change.)

(b) Notwithstanding the provisions of (a) above, an owner of property from which Pinelands Development Credits are sold may retain a right for residential development on that property provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that property is reduced [in proportion to the lot area required pursuant to this Plan for the residential development] **by .25 Pinelands Development Credit for each reserved right to build a dwelling unit.** Subdivision of the property shall not be required until such time as the residential development right is exercised. [No such reduction is required if the right to develop a farm related residence in accord with N.J.A.C. 7:50-5.24(a)2 is retained.]

(c) (No change.)

7:50-5.47 Recordation of deed restriction

(a) (No change.)

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the property may only be used in perpetuity for the following uses:

1.-2. (No change.)

3. In Agricultural Production Areas:

i. Agriculture; [farm related housing in accord with N.J.A.C. 7:50-5.2(a)2;] forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; agricultural sales establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.

ii. (No change.)

(c) (No change.)

7:50-6.65 [Application requirements for resource extraction] **(Reserved)**

[(a) All applications for development involving resource extraction shall include, in addition to the information required by N.J.A.C. 7:50-4.2(b), the following information:

1. A topographic map at a scale of one inch equals 400 feet, showing the proposed dimensions, location and operations on such property;

2. A U.S.G.S. quadrangle map showing the dimensions of the property and an area of at least 1,000 feet beyond such property in all directions;

3. The location, size and intended use of all buildings;

4. The location of all points of ingress and egress;

5. The location of all streams, wetlands and significant vegetation, forest associations, and wildlife habitats;

6. The location of all existing and proposed streets and rights-of-way, including railroad rights-of-way, excluding those included within the area to be mined;

7. A soils map;

8. A reclamation plan which includes:

i. Method of stockpiling topsoil and overburden;

ii. Proposed grading and final elevations;

iii. Topsoil material application and preparation;

iv. Type, quantity and age of vegetation to be used;

v. Fertilizer application including method and rates;

vi. Planting method and schedules; and

vii. Maintenance requirements schedule.]

7:50-6.154 Designation of historic resources and districts

(a) Those historic resources within the Pinelands which are from time to time listed in the State [and] **or** National Registers of Historic Places, pursuant to N.J.S.A. 13:1B-15.128 et seq. and P.L. 89-665; 80 Stat 915: 16 U.S.C. 470, respectively, are hereby designated as historic resource of significance to the Pinelands.

(b)-(g) (No change.)

7:50-6.156 Treatment of resources

(a)-(c) (No change.)

(d) Effect of issuance of Certificate of Appropriateness.

1. (No change.)

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for one year. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within one year, the standards of this Part shall thereafter not apply to the [property] **cultural resource** in question.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Adult Day Health Care Facilities Standards for Licensure

Proposed Repeal and New Rules: N.J.A.C. 8:43F

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1989-565.

Submit comments by December 6, 1989 to:

Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current Manual of Standards for Licensure of Non-Residential Medical Day Care Facilities, N.J.A.C. 8:43F, will expire on March 18, 1990, pursuant to the "sunset" provisions of Executive Order No. 66(1978). Current N.J.A.C. 8:43F serves as the basis for the licensure of the 57 facilities which are currently providing adult day health care services in New Jersey. These facilities exist either as freestanding facilities or as distinct components of licensed inpatient health care facilities. The current rules initially became effective on January 2, 1980 (see 11 N.J.R. 437(b), 11 N.J.R. 622(b)). The readoption of current N.J.A.C. 8:43F without change became effective on March 18, 1985 (see 16 N.J.R. 3277(a), 17 N.J.R. 706(a)). The need for adult day health care services in New Jersey has increased since the current rules were readopted, as evidenced by the fact that the number of facilities licensed to provide these services has increased from 28 in 1984 to the 57 presently licensed. In fact, this growth and the concomitant transformation of adult day health care services throughout the nation as well as in New Jersey over the past decade have given rise to the recognition of the appropriateness of using the term "adult day health care" in describing these licensed facilities. Given the importance of adult day health care and the scheduled expiration of the current licensure rules, the Department is proposing the

adoption of new rules at N.J.A.C. 8:43F entitled "Manual of Standards for Licensure of Adult Day Health Care Facilities."

Adult day health care represents a cost-effective and cost-efficient alternative to the institutionalization of patients. This type of care permits patients to continue to live independently in the community and affords the family assistance and respite in the caring for family members. Adult day health care facilities provide specialized, integrated multidisciplinary care to patients in order to assist patients in reaching the functional levels of which they are capable as well as protect their health and safety. The aim of the proposed chapter is to establish minimum rules to which adult day health care facilities must adhere in order to be licensed to operate in New Jersey.

Proposed N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Care Facilities, has been developed with the assistance of an advisory committee established by the Department, which includes representatives of the New Jersey Adult Day Care Association, the New Jersey Association of Health Care Facilities, the Southern New Jersey Adult Day Care Directors Group, the New Jersey Chapter of the American Physical Therapy Association, the New Jersey Occupational Therapy Association, and the New Jersey Activities Professionals Association. It also includes health care professionals from adult day health care facilities, representatives of the New Jersey State Department of Human Services, and representatives of the New Jersey State Department of Health.

Development of the proposed rules for licensure of adult day health care facilities proceeded from the Department's consideration and evaluation of comments and recommendations submitted by the committee to a series of advisory committee meetings. The Department maintains that the proposed rules which have emerged from this developmental process preserve and serve the intent of the current rules to protect the health and safety of patients and to ensure the provision of adequate patient care and treatment, while expressing this intent clearly and in such a way as to allow facility administrators and health care professionals the opportunity to devise innovative, effective methods of providing adult day health care services to patients.

A summary of the proposed new rules follows:

The scope and purpose of the rules in this proposed chapter are set forth in proposed N.J.A.C. 8:43F-1. The proposed new rules contain definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to adult day health care facilities which are defined for the purposes of this text and general terms which are defined from an adult day health care perspective. Such adult day health care-oriented definitions include definitions of "activities of daily living (ADL)," "daily census," "patient plan of care," and "transportation services." The proposed subchapter also delineates the qualifications of the health care practitioners to whom the proposed rules refer, including occupational therapists, the patient activities director, physical therapists, and social workers.

Proposed N.J.A.C. 8:43F-2, Licensure Procedures, outlines procedures for obtaining a license, which are similar to those for other types of health care facilities. Sections of proposed N.J.A.C. 8:43F-2 address requirements for the following: Certificate of Need; application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; and the fee schedule for filing an application for licensure; as well as the facility's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

General areas common to the licensure rules for many types of health care facilities are addressed by proposed N.J.A.C. 8:43F-3. Proposed N.J.A.C. 8:43F-3 specifies the services which adult day health care facilities must provide directly in the facility. These include dietary, nursing, patient activities, pharmaceutical, and social work services. The facility must also provide dental, laboratory, medical, nutritional counseling, occupational therapy, physical therapy, speech-language pathology, and radiological services. Proposed N.J.A.C. 8:43F-3.1(d) requires that the facility provide transportation services for patients between the adult day health care facility and the patient's home. The above requirements are consistent with current N.J.A.C. 8:43F. The staffing ratio delineated in proposed N.J.A.C. 8:43F-3.1(f) is consistent with current N.J.A.C. 8:43F-3.17(d)7, which mandates that at least one full-time staff member be appointed for every nine patients, calculated on the basis of the daily census. Proposed N.J.A.C. 8:43F-3.1(f), however, further states that additional staff members shall be provided when assessment of the acuity of patient need indicates that additional staff members are required, in accordance with the facility's patient care policies and procedures for determining staffing levels. Proposed N.J.A.C. 8:43F-3.5 requires that the adult day health care facility develop and implement a policy and procedure manual for the organization and operation of the facility.

Proposed N.J.A.C. 8:43F-4 outlines the responsibilities of the governing authority, which retains legal responsibility for the management, operation, and financial viability of the facility. The responsibilities enumerated include provision of a safe, adequately staffed and equipped physical plant.

Proposed N.J.A.C. 8:43F-5 applies to the administration of the facility. In addition to requiring the appointment of a full-time administrator and the designation of an alternate, one of whom must be available on the premises of the facility when patient care services are being provided, the proposed subchapter lists administrative responsibilities.

Requirements for patient care policies for the facility are set forth in proposed N.J.A.C. 8:43F-6. This subchapter is intended to protect patient health and safety, to facilitate the delivery of appropriate patient care, and to enhance the patient's access to information. Although the rules specify subject areas for which policies and procedures are to be developed, the policies and procedures are to reflect the special nature of adult day health care facilities, as perceived by the individual facility. For example, proposed N.J.A.C. 8:43F-6.1(a)2, which reaffirms the importance of proposed N.J.A.C. 8:43F-3.1(f) discussed above, requires policies and procedures for the determination of staffing levels on the basis of the daily census and on the basis of an assessment of the acuity of patient need. In order to facilitate the provision of patient care, proposed N.J.A.C. 8:43F-6.2 requires that, prior to the admission of a patient to an adult day health care facility, a member of the multidisciplinary team or a repesentative of a community health agency visit the patient's home and perform an assessment of the patient's home environment. The proposed subchapter also contains a series of provisions intended to ensure that the patient is fully informed of all financial arrangements.

Proposed N.J.A.C. 8:43F-7, which concerns patient assessment and the patient plan of care, is indicative of the multidisciplinary approach characteristic of adult day health care. The objective of the proposed subchapter is to enhance the ability of facility personnel to provide appropriate, individualized, quality patient care. The proposed subchapter requires assessments of each patient prior to or upon the patient's admission. The assessments are to be used to develop a multidisciplinary patient plan of care, which is to be reviewed and revised. Each health care practitioner providing services to the patient is to participate as a member of the multidisciplinary team. Proposed N.J.A.C. 8:43F-7 promotes interaction of team members by encouraging communication and exchange of ideas and services. The multidisciplinary approach allows health care practitioners to plan, provide, review, and reevaluate services in a way which acknowledges the uniqueness of each individual patient.

A physician shall be designated to serve as medical director, according to proposed N.J.A.C. 8:43F-8, Medical Services. The medical director's responsibility for the direction, provision, and quality of the medical service is specified, as are the responsibilities of the physician providing care to the patient. Proposed N.J.A.C. 8:43F-8.3 requires that the patient's physician participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care. The patient's physician is also required to perform a medical history and physical examination and to certify that the patient requires the type and intensity of care provided by the adult day health care facility.

Proposed N.J.A.C. 8:43F-9 requires the facility to provide nursing services to patients, directly in the facility. The proposed subchapter includes a requirement for a registered professional nurse to be on duty at all times when services are being provided in the adult day health care facility. Decisions regarding additional nurse staffing would be determined by relevant characteristics of the patient population. Since proposed N.J.A.C. 8:43F-9.2 requires that such decisions take into consideration an assessment of the acuity of patient need, nurse staffing would not be based solely upon the number of patients in the facility.

According to proposed N.J.A.C. 8:43F-10, pharmaceutical services must be provided to patients, directly in the facility. If the facility has an institutional pharmacy, then the pharmacy must be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. Designation of a pharmacist to be responsible for the service and establishment of a pharmacy committee are required, and the responsibilities of the pharmacist and the committee are stated. The proposed subchapter also addresses such issues as policies and procedures regarding the self-administration of medication and the control of drugs subject to the Controlled

Dangerous Substances Acts and amendments thereto. In contrast to the current rules at N.J.A.C. 8:43F, proposed N.J.A.C. 8:43F-10.5(f) mandates that a unit dose drug distribution system be established and implemented within three years of the effective date of the proposed chapter. The unit dose drug distribution system promotes the safe and proper use of medications and facilitates the provision of cost-effective care.

Rules regarding dietary services comprise proposed N.J.A.C. 8:43F-11. The adult day health care facility is required to provide a minimum of one meal per day to patients. The proposed subchapter requires designation of a dietitian to be responsible for the service and lists responsibilities of dietitians. Also, the designated food service supervisor must be present when meals are prepared in the facility.

Proposed N.J.A.C. 8:43F-12 recognizes the importance of rehabilitation services by requiring that adult day health care facilities provide physical therapy, occupational therapy, and speech-language pathology services. The responsibilities of therapists, who must perform their duties in accordance with pertinent State practice acts, are delineated in the proposed subchapter. These responsibilities include participating as part of the multidisciplinary team in developing the patient plan of care and providing patient care services as specified in the physical therapy, occupational therapy, and speech-language pathology portions of the patient plan of care on the basis of the respective assessments of the patient.

Requirements for provision of social work services in adult day health care facilities are contained in proposed N.J.A.C. 8:43F-13. The social care needs of each patient must be assessed prior to or upon the patient's admission. The proposed subchapter requires the social worker to be part of the multidisciplinary team and to attend specifically to the social elements of care appropriate for patients in an adult day health care facility.

The requirements for a planned, diversified program of patient activities are delineated in proposed N.J.A.C. 8:43F-14, Patient Activities Services. The patient activities staff is required to provide activities which are intended to maintain the patients' sense of usefulness and self-respect. The facility must provide at least 10 hours of patient activities services per week for every 15 patient equivalents, calculated on the basis of the daily census. The proposed subchapter concerning patient activities is regarded as particularly important because it concerns a service which addresses the personal needs of patients and which is designed to give meaning to patients' lives.

Proposed N.J.A.C. 8:43F-15 requires that dental services be provided to patients, including, but not limited to, examination, oral prophylaxis, and emergency dental care to relieve pain and infection. Licensing of laboratories and facilities providing radiological services by the appropriate State agencies (Departments of Health and Environmental Protection, respectively) is also addressed.

The content of proposed N.J.A.C. 8:43F-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The adult day health care facility is required by the proposed subchapter to develop a written emergency plan for various emergency situations, including medical emergencies, equipment breakdown, fire, and other disaster. In the event that the adult day health care facility is unable to provide services to patients as scheduled due to the occurrence of an emergency, the adult day health care facility is required to notify patients of the change in schedule. The provisions contained in the proposed subchapter are intended to promote patient safety.

Patient rights are the subject of proposed N.J.A.C. 8:43F-17. The proposed rules are similar to those contained in licensure manuals for other types of health care facilities and are intended to ensure that patients are treated in a manner which recognizes and respects their basic human rights. Such rights include, for example, the right to appropriate treatment, freedom from discrimination or abuse, the right to register complaints, and the right to privacy concerning patient treatment and disclosures. The administrator is required by the proposed rules to provide all patients and/or their families with the names, addresses, and telephone numbers of offices where complaints may be lodged as well as where information concerning Medicare coverage may be obtained.

Proposed N.J.A.C. 8:43F-18 concerns discharge planning—an important part of the continuum of patient care. The intent of the proposed subchapter is to facilitate the progression of the patient along the continuum of care.

Proposed N.J.A.C. 8:43F-19.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified in proposed N.J.A.C. 8:43F-1.11. This and other requirements in proposed N.J.A.C. 8:43F-19 are similar to those for other types of health care facilities.

In the interest of patient safety and quality care, current N.J.A.C. 8:43F-4.29 has been updated and rewritten as proposed N.J.A.C. 8:43F-20, Infection Prevention and Control Services. Critical public health issues related to the spread of human immunodeficiency virus (HIV), the virus which causes AIDS, and the adverse impact of disposal of medical waste into the environment were given serious consideration in the development of proposed N.J.A.C. 8:43F-20. Consequently, the proposed rules require that the facility implement policies and procedures for infection control and isolation, including use of "universal precautions," as specified by the Centers for Disease Control and the Occupational Safety and Health Administration. Adult day health care facilities would also be required to adhere to all Category I recommendations in the current editions of particular Centers for Disease Control publications, which have been incorporated by reference into the proposed rules. The collection, storage, handling, and disposal of regulated medical waste are addressed in proposed N.J.A.C. 8:43F-20.6, which requires that adult day health care facilities comply with the provisions of 42 U.S.C. 6903 et seq., the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to these laws.

Requirements regarding housekeeping, sanitation, and safety comprise proposed N.J.A.C. 8:43F-21. The adult day health care facility is required by the proposed subchapter to maintain a safe, sanitary environment, in accordance with policies and procedures which the facility develops. In requiring adult day health care facilities to meet standards of environmental cleanliness and equipment maintenance, the proposed subchapter is consistent with the general aim of the proposed rules of promoting patient safety and well-being.

According to proposed N.J.A.C. 8:43F-22, the facility must establish a quality assurance program for patient care. A written plan specifying a timetable and the person or persons responsible for the program must provide for ongoing monitoring of staff and of services rendered to patients. The purpose of the proposed subchapter is to facilitate the identification and resolution of problems which could hinder the provision of appropriate patient care of high quality.

Social Impact

N.J.S.A. 26:2H-1 et seq. gives the Department of Health the responsibility for protectingand promoting the health of the citizens of New Jersey and also gives the Department the authority to establish rules for the licensure of health care facilities. Proposed N.J.A.C. 8:43F establishes minimum rules for the licensure of adult day health care facilities. The intent of the proposed rules is to ensure the quality of care provided to patients who receive adult day health care services.

According to The National Council on the Aging, Inc., publication entitled "Adult Day Care in America: Summary of a National Survey" (October 1986), adult day health care "is a distinctive service in its approach and focus." The report also delineates some of the socially significant properties of adult day health care:

> Adult day care is a flexible program of services and activities designed to provide an individualized plan of care. It affords new opportunities for personal enrichments and provides a setting for group involvement outside the home. Adult day care reduces the isolation and prejudice often associated with frail and impaired adults and ensures continued relationships with the community. It also enables the individual to maintain his/her role within the family structure and remain at home for as long as possible.
>
> While families usually are the primary providers of care to the frail and impaired adults, they are seldom able to provide all of the needed physical, social and emotional support. Adult day care shares providing of the care while educating, counseling and supporting the caregivers. It seeks to create an atmosphere that enhances the value of human life and affirms the dignity and self-worth of an individual. The uniqueness of adult day care stems from its individualized approach and its ability to meet the individual's needs. It must, however, always be viewed as part of a larger array of community-based services that assist the frail and impaired adult to achieve the quality of life that makes living worthwhile.

The proposed new rules require provision of a range of services, including dietary, nursing, patient activities, pharmaceutical, and social work services, under medical supervision. The facility is also required to

provide dental, laboratory, nutritional counseling, occupational therapy, physical therapy, speech-language pathology, radiological, and transportation services. The proposed rules present the various services as an organized system which includes coordinated multidisciplinary patient assessment and ongoing reassessment.

Persons who would be affected by the adoption of the proposed rules include providers of adult day health care services and persons requiring adult day health care services and their families. The proposed rules are designed to provide adult day health care facilities with the flexibility to establish policies, procedures, and means of service delivery which are best, given the facilities' individual structures and patient populations. The proposed rules recognize the value of involving the patient and the patient's family in the patient's care. For example, the rules contain requirements regarding patient and family instruction, education, and when possible, participation in the development of the patient's plan of care.

The need for adult day health care services in New Jersey has increased since the current rules were readopted, as evidenced by the fact that the number of licensed facilities has increased. Whereas there were 28 adult day health care facilities licensed by the Department in 1984, there are now 57 licensed adult day health care facilities. Adult day health care facilities have become increasingly important and versatile. Adoption of the proposed rules will allow these programs to continue to serve patients in a setting which fosters independence and the realization of capabilities.

Economic Impact

Adult day health care facilities are currently providing the services addressed by the proposed new rules. Also, the proposed rules present requirements which reflect many of the current practices already instituted by adult day health care facilities. Consequently, adoption of proposed N.J.A.C. 8:43F would not result in significantly higher costs to facilities. The Departmental licensure and survey mechanisms already in place for adult day health care facilities will continue to function, at no anticipated additional cost.

The proposed new rules allow the facilities flexibility in management practices, such as in developing policies and procedures best suited to their individual circumstances, and in determining staffing levels to meet patient care needs. This flexibility would allow the facilities to conserve resources by utilizing services and personnel in the most efficient manner.

The requirements for a unit dose drug distribution system, which is to be established within three years, may result in increased cost to facilities. Nevertheless, review of the literature and consideration of the compensatory benefits of the adoption of the proposed measures suggest that the rules would be cost-effective over time and would actually produce long-term savings.

On the basis of information contained in correspondence received from The National Council on the Aging, Inc. (600 Maryland Ave. SW, West Wing 100, Washington, DC 20024), and other considerations, the Department maintains that adult day health care offers numerous economic advantages. Adult day health care is a cost-effective alternative to the more costly care which is provided in the home or in a long-term care facility. In an adult day health care facility, a comprehensive range of individualized health care services is provided to patients in a community-based program. The patients who participate in adult day health care programs receive ongoing monitoring of their health status. This monitoring often results in early identification of health problems and in early intervention, often reducing the need for multiple physician visits, medications, and/or hospitalization. Prevention or postponement of institutional placement results in savings to patients, family members, and/or governmental agencies. Adult day health care produces indirect economic benefits by providing needed respite for family members who care for the patient at home. Employed family members are able to continue to work. Hours of work lost in caring for a disabled family member result in lost wages and tax dollars. The respite provided by adult day health care facilities reduces the level of stress experienced by family members who care for the patient at home. Stress contributes to the health problems of these family members. Maintaining the health of family members can diminish their need for frequent physician visits, for medications, and for hospitalization. Negative economic consequences would follow if current N.J.A.C. 8:43F were allowed to expire and the proposed new rules were not adopted. The discontinuance of adult day health care services would lead to inappropriate institutionalization of patients and an increase in the cost of patient care.

Regulatory Flexibility Analysis

The rules in this chapter place requirements on adult day health care facilities, some of which may be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The proposed new rules, however, do not differ fundamentally from the current rules with respect to recordkeeping and reporting requirements. Required services must be documented when provided to the patient. Discharge plans must be updated. Additionally, records of fire drills held and of the handling of regulated medical waste are required to be maintained. Changes in the rules have been designed to minimize the adverse economic impact on small businesses, while ensuring the provision of quality care to patients. The Department of Health has determined that compliance with the proposed new rules is necessary for all facilities which provide adult day health care services, in the interest of public health and safety, and that there should be no differentiation based on business size.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:43F.

Full text of the proposed new rules follows:

CHAPTER 43F
MANUAL OF STANDARDS FOR LICENSURE OF ADULT DAY HEALTH CARE FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43F-1.1 Scope

The rules in this chapter pertain to all facilities which provide adult day health care services. These rules constitute the basis for the licensure of adult day health care facilities by the New Jersey State Department of Health.

8:43F-1.2 Purpose

Adult day health care facilities provide specialized, integrated care to patients in order to assist patients in reaching the functional levels of which they are capable as well as to protect their health and safety. The purpose of this chapter is to establish minimum rules to which an adult day health care facility must adhere in order to be licensed to operate in New Jersey.

8:43F-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Adult day health care facility" means a facility or a distinct part of a facility which is licensed by the New Jersey State Department of Health to provide preventive, diagnostic, therapeutic, and rehabilitative services under medical supervision to meet the needs of functionally impaired adult patients who are not related to the members of the governing authority by marriage, blood, or adoption. Adult day health care facilities provide services to patients for a period of time which does not exceed 12 hours during any calendar day.

"Ancillary nursing personnel" means unlicensed workers employed to assist licensed nursing personnel.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a written, signed, and dated notation made by a health care professional who renders a service to the patient. Clinical notes are written into the patient's medical record the day service is rendered.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission

of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970, N.J.S.A. 24:21-1 et seq.

"Current" means up-to-date, extending to the present time.

"Daily census" means the number of patient equivalents who, during any one calendar day, receive services in the facility. The number of patient equivalents is calculated by dividing the sum of all the hours of services received by patients in the facility on a given day by the number five. For example, two patients each receiving 2.5 hours of service constitute one patient equivalent.

"Department" means the New Jersey State Department of Health.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"Documented" means written, signed, and dated.

"Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The word "medication" is used interchangeably with the word "drug" in this chapter.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Family" means persons related by blood, marriage, or commitment.

"Full-time" means relating to a time period of not less than 35 hours, established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medical record" means all records in the facility which pertain to the patient, including radiological films.

"Monitor" means to observe, watch, or check.

"Multidisciplinary team" means those persons, representing different professions, disciplines, and services, who work together to provide an integrated program of care to the patient.

"Nosocomial infection" means an infection acquired by a patient while in the facility.

"Patient plan of care" means a written plan of patient care which contains documentation of joint planning by the multidisciplinary team. The plan is based upon the patient assessments of all services participating in the patient's care and includes care and treatment to be provided. Each service that the patient receives develops its own portion of the patient plan of care.

"Prescriber" means a person who is authorized to write prescriptions in accordance with Federal and State laws.

"Progress note" means a written, signed, and dated notation summarizing information about care provided and the patient's response to it.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control patient movements.

"Self-administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed, labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Signature" means at least the first initial and full surname and title (for example, RN, LPN, DDS, MD, DO) of a person, legibly written with the person's own hand.

"Staff education plan" means a written plan which describes a coordinated program for staff education for each service, including in-service programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which the employee has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

"Transportation services" means the conveying of patients between the facility and the patient's home.

"Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

8:43F-1.4 Qualifications of the administrator of the adult day health care facility

(a) The administrator of an adult day health care facility shall:

1. Be a licensed nursing home administrator licensed by the New Jersey State Department of Health; or

2. Be a registered professional nurse with at least one year of full-time, or full-time equivalent, administrative or supervisory experience in a licensed health care facility; or

3. Have a baccalaureate degree from a college or university approved by a state department of education and at least one year of full-time, or full-time equivalent, administrative or supervisory experience in a licensed health care facility.

8:43F-1.5 Qualifications of dentists

Each dentist at an adult day health care facility shall be so licensed by the New Jersey State Board of Dentistry.

8:43F-1.6 Qualifications of dietitians

Each dietitian at an adult day health care facility shall be registered or eligible for registration by the Commission on Dietetic Registration (Office on Dietetic Credentialing, 216 W. Jackson Boulevard—7th Floor, Chicago, Illinois 60606-6995).

8:43F-1.7 Qualifications of the director of nursing services

The director of nursing services at an adult day health care facility shall be a registered professional nurse who has at least one year of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a licensed health care facility.

8:43F-1.8 Qualifications of food service supervisors

(a) The food service supervisor at an adult day health care facility shall:

1. Be a dietitian; or

2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association (Office on Dietetic Credentialing, 216 W. Jackson Boulevard—7th Floor, Chicago, Illinois 60606-6995); or

3. Be a graduate of a course approved by the State of New Jersey providing 90 or more hours of classroom instruction in food service supervision and have at least one year of full-time, or full-time equivalent, experience as a food service supervisor in a licensed health care facility, with consultation from a dietitian; or

4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in (a)2 or 3 above.

8:43F-1.9 Qualifications of licensed practical nurses

Each licensed practical nurse at an adult day health care facility shall be so licensed by the New Jersey State Board of Nursing.

8:43F-1.10 Qualifications of the medical director

The medical director of an adult day health care facility shall be a physician.

8:43F-1.11 Qualifications of medical record practitioners

(a) Each medical record practitioner at an adult day health care facility shall:

1. Be certified or eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association (American Medical Record Association, 875 North Michigan Avenue, Suite 1850, John Hancock Center, Chicago, Illinois 60611); or

2. Be a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association (American Medical Record Association, 875 North Michigan Avenue, Suite 1850, John Hancock Center, Chicago, Illinois 60611).

8:43F-1.12 Qualifications of occupational therapists

Each occupational therapist at an adult day health care facility shall be certified or eligible for certification as an occupational therapist, registered (OTR) by the American Occupational Therapy Association (American Occupational Therapy Association, 6000 Executive Boulevard, Rockville, Maryland 20852).

8:43F-1.13 Qualifications of patient activities director

(a) The patient activities director at an adult day health care facility shall:

1. Be certified or eligible for certification as an activity director certified (ADC) by the National Certification Council for Activity Professionals (National Certification Council for Activity Professionals, 520 Stewart, Park Ridge, Illinois 60068); or

2. Be certified or eligible for certification as a certified therapeutic recreation specialist (CTRS) by the National Council for Therapeutic Recreation (National Council for Therapeutic Recreation, P.O. Box 16126, Alexandria, Virginia 22302); or

3. Be certified or eligible for certification by the New Jersey State Board of Recreation Examiners (New Jersey State Board of Recreation Examiners, 101 South Broad Street, CN 814, Trenton, New Jersey 08625) as a recreation administrator or recreation supervisor; or

4. Have a baccalaureate degree from a college or university approved by a state department of education with a major in recreation, creative arts therapy, music therapy, therapeutic recreation, art, art education, psychology, sociology, or occupational therapy; or

5. Have a high school diploma and at least two years of full-time, or full-time equivalent, experience in patient activities in a licensed health care facility and have successfully completed an activities education program approved by the New Jersey State Department of Health.

8:43F-1.14 Qualifications of pharmacists

Each pharmacist at an adult day health care facility shall be so registered by the New Jersey State Board of Pharmacy.

8:43F-1.15 Qualifications of physical therapists

Each physical therapist at an adult day health care facility shall be so licensed by the New Jersey State Board of Physical Therapy Examiners.

8:43F-1.16 Qualifications of physicians

Each physician at an adult day health care facility shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:43F-1.17 Qualifications of registered professional nurses

Each registered professional nurse at an adult day health care facility shall be so licensed by the New Jersey State Board of Nursing.

8:43F-1.18 Qualifications of social workers

(a) Each social worker at an adult day health care facility shall have:

1. A master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education (Council on Social Work Education, 1744 R Street, NW, Washington, DC 20036); or

2. A baccalaureate degree in social work from a social work program accredited by the Council on Social Work Education (Council on Social Work Education, 1744 R Street, NW, Washington, DC 20036) and at least one year of full-time, or full-time equivalent, social work experience in a licensed health care facility; or

3. A baccalaureate degree from a college or university approved by a state department of education with a major in social work, psychology, sociology, or counseling and at least one year of full-time, or full-time equivalent, social work experience in a licensed health care facility.

8:43F-1.19 Qualifications of speech-language pathologists

Each speech-language pathologist at an adult day health care facility shall be so licensed by the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43F-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner, pursuant to the requirements of N.J.A.C. 8:33.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq.

8:43F-2.2 Application for licensure

(a) Following receipt of a Certificate of Need as an adult day health care facility, any person, organization, or corporation desiring to operate an adult day health care facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

(b) The Department shall charge a nonrefundable fee of $500.00 for the filing of an application for licensure as an adult day health

care facility and $500.00 for the annual renewal of the license. If adult day health care services are offered by a licensed hospital facility as a separate service within the hospital, the hospital facility shall be charged $150.00 for the filing of an application for licensure of the service and $150.00 for the annual renewal.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

8:43F-2.3 Newly constructed or expanded facilities

(a) The application for license for a newly constructed or expanded facility shall, pursuant to N.J.A.C. 8:43F-23, include written approval of final construction of the physical plant by:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

(b) An on-site inspection of the construction of the physical plant shall be made by representatives of the Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

(c) Any adult day health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:43F-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43F-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq. and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate that the facility adheres to the rules in this chapter; and

5. Professional personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43F-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq. and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

8:43F-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43F-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq. and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the request for waiver.

(d) The Department reserved the right to request additional information before processing a request for waiver.

8:43F-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever the Commissioner determines imminent danger to any person's health or safety.

(c) The provisions of this section shall apply to facilities with a temporary license and facilities with a full license.

8:43F-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the Commissioner has ordered the immediate removal of all patients from a facility pursuant to N.J.A.C. 8:43F-2.8, the applicant may request an expedited hearing.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:43F-3.1 Services provided

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients who do not require 24-hour inpatient health care, in accordance with the rules in this chapter.

(b) The facility shall provide, at a minimum, dietary, nursing, patient activities, pharmaceutical, and social work services, directly in the facility.

(c) The facility shall provide dental, laboratory, medical, nutritional counseling, occupational therapy, physical therapy, speech-language pathology, and radiological services.

(d) The facility shall provide transportation services. ("Transportation services" means the conveying of patients between the facility and the patient's home.) No patient's total daily transportation time shall exceed two hours.

(e) Adult day health care services shall be provided for at least seven consecutive hours daily, a minimum of five days a week.

(f) The facility shall provide at least one full-time, or full-time equivalent, staff member for every nine patient equivalents, calculated on the basis of the daily census. Additional staff members shall be provided when assessment of the acuity of patient need indicates that additional staff members are required, in accordance with the facility's patient care policies and procedures for determining staffing levels.

1. The facility shall maintain a daily record of patient attendance for each day on which services are provided.

(g) If a health care facility licensed by the Department provides adult day health care services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the rules for licensure of facilities providing the other health care services.

(h) Except in an emergency, facilities shall not provide services for more than 12 hours during any calendar day of the year without prior written approval by the Department.

(i) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

8:43F-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:43F-3.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing, Certification and Standards Program of the Department.

8:43F-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies, and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing schedules. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing schedules shall be implemented to ensure continuity of care.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training.

1. All personnel shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, emergency plans and procedures and the infection prevention and control services.

8:43F-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's philosophy and objectives, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility;

3. A description of mechanisms for referral of patients to other health care providers, in order to provide a continuum of care for the patient;

4. A description of the quality assurance program for patient care and staff performance;

5. Specification of the hours and days on which services are provided;

6. Policies and procedures for the maintenance of personnel records for each employee, including, at a minimum, the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and for other persons providing direct patient care services.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

8:43F-3.6 Written agreements

The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered and shall require that services be provided in accordance with the rules in this chapter.

8:43F-3.7 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7726 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of the administrator's replacement. If a new administrator cannot be designated within 72 hours, the Department shall be so notified in writing and the facility shall make arrangements for administrative supervision. A new administrator shall be appointed within 30 days;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department.

8:43F-3.8 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility to patients and the public:

1. All waivers granted by the Department;

2. The list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights; and

4. The names and addresses of the members of the governing authority.

8:43F-3.9 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department within 30 days of the proceeding or action, request, settlement, judgement or award. (Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; and

2. A medical malpractice liability insurance claim settlement, judgement or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgement or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgement, or award; and

vi. Other information relating to the settlement, judgement, or arbitration award as may be required by the Board.

8:43F-3.10 Maintenance of records

(a) The following records shall be maintained by the facility:

1. A chronological listing of patients admitted and discharged, including the destination of patients who are discharged; and

2. Statistical data as required by the Department.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:43F-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;

2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;

3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;

4. Appointment, reappointment, assignment of privileges, and curtailment of privileges of health care professionals, and written confirmation of such actions;

5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;

6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, conducting such meetings, and documenting them through minutes;

8. Delineation of the duties of the officers of any committees, or their equivalent, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;

9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and

10. Approval of the medical staff bylaws or their equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:43F-5.1 Appointment of administrator

The governing authority shall appoint a full-time administrator. The administrator, or an alternate who shall be designated in writing to act in the absence of the administrator, shall be available on the premises of the facility during the hours when patient care services are being provided.

8:43F-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;

2. Planning for, and the administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Participating in the quality assurance program for patient care and staff performance;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:43F-6.1 Policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures for the following:

1. Patient rights;

2. The determination of staffing levels on the basis of the daily census and on the basis of an assessment of the acuity of patient need;

3. The referral of patients to other health care providers, in order to provide a continuum of care for the patient;

4. Emergency care of patients, including notification of the patient's family; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;

5. Obtaining written informed consent;

6. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;

7. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq.;

8. Discharge, transfer, and readmission of patients, including criteria for each;

9. The care and control of pets if the facility permits pets in the facility or on its premises; and

10. Exclusion of patients from the facility, and authorization to return to the facility, for patients with communicable disease.

8:43F-6.2 Admission and retention of patients

(a) Prior to admission of the patient, a member of the multidisciplinary team or a representative of a community health agency shall visit the patient's home and perform an assessment of the patient's home environment. The assessment shall be documented in the patient's medical record and shall include assessment of at least the following:

1. Living arrangements;
2. The patient's relationship with the patient's family;
3. Amenities and facilities available, such as heat, toilet and bathing facilities, and provisions for preparing and storing food;
4. Existence of environmental barriers, such as stairs, not negotiable by the patient; and
5. Access to transportation, shopping, religious, social, or other resources to meet the needs of the patient.

(b) The administrator or a designee shall conduct an interview with the patient and the patient's family prior to or at the time of the patient's admission. The interview shall include at least orientation of the patient to the facility's policies and services, hours and days on which services are provided, fee schedule, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record.

(c) A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained.

(d) A patient suffering exclusively from substance abuse or misuse shall not be admitted to or retained in the facility.

(e) A patient under 16 years of age shall not be admitted.

(f) Patients who require wheelchairs shall be restricted to the first floor of the facility. A facility which has been granted any physical plant waiver by the Department shall not admit a patient requiring a wheelchair.

(g) Patients who require supervision or assistance with ambulation shall be restricted to the first floor in all facilities which are not of fire-resistive construction.

(h) If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or the applicant's family shall be given the reason for such denial in writing, signed by the administrator, within 15 days of receipt of the written application.

8:43F-6.3 Involuntary discharge

(a) Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge the patient from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record.

(b) The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing, and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal.

8:43F-6.4 Financial arrangements

(a) The facility shall:

1. Inform patients of the fees for services and supplies (where a fee is charged);
2. Maintain a written record of all financial arrangements with the patient and/or the patient's family, with copies furnished to the patient;
3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

i. Upon written approval and authority of the patient and/or the patient's family, who shall be given a copy of the written approval;

ii. Upon written orders of the patient's physician, stipulating specific services and supplies not included in the admission agreement;

iii. Upon 15 days' prior written notice to the patient and/or the patient's family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

iv. In the event of a health emergency involving the patient and requiring immediate, special services or supplies to be furnished during the period of the emergency;

4. Describe for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and
5. Describe sliding fee scales and any special payment plans established by the facility.

8:43F-6.5 Verbal and telephone orders

Verbal and telephone orders shall be written into the patient's medical record by the person accepting them and countersigned by the prescriber within 48 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures.

8:43F-6.6 Interpretation services

The facility shall provide interpretation services, if the patient population is non-English-speaking and for patients who are blind or deaf.

8:43F-6.7 Notification of family

The patient's family shall be notified in the event that the patient sustains an injury, or an accident or incident occurs, immediately after the occurrence. Immediately following such notification, the notification shall be documented in the patient's medical record.

8:43F-6.8 Use of restraints

The facility shall not use any physical or chemical restraint.

8:43F-6.9 Patient follow-up

The facility shall establish and implement policies and procedures for follow-up of patients, in the event that a patient does not appear for services on scheduled days, and for documentation of the follow-up in the patient's medical record.

8:43F-6.10 Provision of beds, lounges or recliners

The facility shall provide at least one bed, lounge, recliner, or equivalent for every 10 adult day health care patient equivalents, calculated on the basis of daily census.

8:43F-6.11 Assistance with activities of daily living

Assistance with activities of daily living shall be provided to patients who require such assistance.

8:43F-6.12 Security and accountability during transportation

The facility shall develop and implement plans for security and accountability for the patient and the patient's personal possessions while transportation services are being provided.

8:43F-6.13 Calibration of instruments

All instruments of measurement shall be calibrated in accordance with manufacturers' instructions.

SUBCHAPTER 7. PATIENT PLAN OF CARE

8:43F-7.1 Patient assessment

(a) Each patient shall have a written patient plan of care. The patient plan of care shall be developed on the basis of assessments of each service participating in the patient's care and shall be entered in the patient's medical record. The patient plan of care shall be initiated prior to or upon the patient's admission, and shall be developed as follows:

1. Health care practitioners in each of the services participating in the patient's care shall develop the portion of the patient plan of care which pertains to that service. Each portion of the patient plan of care shall include care to be provided based upon the patient assessment.
2. The patient plan of care shall include, but not be limited to, the following:

i. Diagnosis and prognosis;

ii. Orders for treatment or services, medications, activities of daily living, and diet;

iii. Goals of the care to be provided;

iv. Scheduled days of attendance;

v. The time intervals at which the patient plan of care will be reviewed;

vi. Anticipated time frame(s) for the accomplishment of the goals; and

vii. The measures to be used to assess the effects of treatment or services.

3. The patient plan of care shall be kept current and available to all personnel providing patient care.

(b) The patient and, if indicated, family members shall participate in the development of the patient plan of care, including the plans for discharge.

1. If the patient's participation in the development of the patient plan of care is medically contraindicated, as documented by a physician in the patient's medical record, a designated member of the multidisciplinary team shall review the patient plan of care with the patient prior to implementation, and the family shall be informed of the patient plan of care. These activities shall be documented in the patient's medical record.

8:43F-7.2 Implementation of patient plan of care

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the patient plan of care.

(b) Health care practitioners providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient's medical record.

(c) Health care practitioners providing services to the patient shall participate as members of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care. Review and revision of the patient plan of care shall be documented in the patient's medical record.

SUBCHAPTER 8. MEDICAL SERVICES

8:43F-8.1 Designation of medical director

(a) The governing authority shall designate a physician to serve as medical director.

(b) The medical director shall not be counted in the staff:patient equivalent ratio.

8:43F-8.2 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. The medical director shall be responsible for, but not be limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;

2. Participating in planning and budgeting for the medical service;

3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Developing, implementing, and reviewing written medical policies in cooperation with the medical staff, including, but not limited to, the following:

i. Medical staff bylaws or their equivalent;

ii. A plan for medical staff meetings and their documentation through minutes; and

iii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care, and the granting, denial, curtailment, suspension, or revocation of medical staff privileges.

(b) The medical director shall ensure that, for each patient, a physician and an alternate physician have been designated who can be contacted when necessary, including in the event of a medical emergency.

8:43F-8.3 Responsibilities of physicians

(a) The physician responsible for providing care to the patient shall provide the following information, which shall be included in the patient's medical record:

1. A signed, dated admission and medical history and a report of physical examination, including results of a chest X-ray, if performed. The history and physical examination shall be performed within 30 days prior to or upon admission;

2. Certification that the patient requires the type and intensity of care provided by the facility and is free of communicable disease;

3. Specification of the degree of patient mobility and specification of any assistive devices which the patient requires;

4. The medical portion of the patient plan of care;

5. Progress notes; and

6. All initial and subsequent orders for services to be provided to the patient, including frequency and modality of treatment.

(b) The physician shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care.

SUBCHAPTER 9. NURSING SERVICES

8:43F-9.1 Provision of nursing services

The facility shall provide nursing services to patients, directly in the facility.

8:43F-9.2 Designation of director of nursing services

A registered professional nurse shall be designated in writing as the director of nursing services and shall be on duty at all times when services are being provided. A registered professional nurse shall be designated in writing to act in the director's absence. Additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staff levels on the basis of an assessment of the acuity of patient need.

8:43F-9.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing services provided to patients. The director of nursing services shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, a nursing philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;

2. Participating in planning and budgeting for the nursing service;

3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Ensuring that nursing services are provided to the patient as specified in the nursing care plan, which shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of an assessment of the acuity of patient need; and

6. Participating in staff education activities and providing consultation to facility personnel.

8:43F-9.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;

2. Care toward prevention of infection, accident, and injury;

3. Assessing the nursing care needs of the patient, preparing the nursing care plan based upon the assessment, providing nursing care services as specified in the nursing care plan, reassessing the patient, and revising the nursing care plan. Each of these activities shall be documented in the patient's medical record. A registered professional nurse shall assess the nursing needs of each patient, develop nursing diagnoses, and design the patient's plan of nursing care;

4. Teaching, supervising, and counseling the patient, family, and staff regarding nursing care and the patient's needs. Only a registered

professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

6. Writing clinical notes and progress notes.

8:43F-9.5 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:

i. Registered professional nurses;

ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;

iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and

iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;

2. Drugs are not prepoured. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;

3. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;

4. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;

5. All drugs are kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigerator shall have a thermometer to indicate temperature in conformance with USP (United States Pharmacopoeia) requirements;

6. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

7. Drugs are stored and verified according to the following:

i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be kept on the person of one of those persons listed in (a)1i through iv above; and

iii. A declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and rules, regulations and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses listed in (a)1i through iv above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

SUBCHAPTER 10. PHARMACEUTICAL SERVICES

8:43F-10.1 Provision of pharmaceutical services

Pharmaceutical services shall be provided to patients, directly in the facility. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts and amendments thereto.

8:43F-10.2 Designation of a pharmacist

(a) A pharmacist shall be designated who shall be responsible for the direction, provision, and quality of pharmaceutical services. The pharmacist shall be responsible for, but not limited to, the following:

1. Together with the pharmacy committee, developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;

2. Participating in planning and budgeting for the pharmaceutical service;

3. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care.

8:43F-10.3 Pharmacy committee

(a) A pharmacy committee shall be established and shall include at least the medical director, the pharmacist, the director of nursing services, and the administrator.

(b) The pharmacy committee shall be responsible for, but not limited to, the development of policies and procedures. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients.

8:43F-10.4 Policies for drug administration

(a) The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

1. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

2. Policies and procedures, approved by the pharmacy committee and in accordance with these rules, regarding emergency kits and emergency carts, including the following:

i. Approval of their locations and contents;

ii. Determination of the frequency of checking contents, including expiration dates;

iii. Approval of the assignment of responsibility for checking contents; and

iv. A requirement that emergency kits be secure, but not be kept under lock and key;

3. Policies and procedures to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

4. Policies and procedures for drug administration, including, but not limited to, establishment of times for administration of prescribed drugs, in accordance with the following procedure:

i. Removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container);

ii. Verifying it with the prescriber's orders;
iii. Giving the individual dose to the patient;
iv. Seeing that the patient takes the medication, if oral; and
v. Recording the required information, including the method of administration;

5. If facility policy permits, policies and procedures regarding the self-administration of drugs, including, but not limited to, the following:

i. A requirement that self-administration be performed as follows:
(1) Removing a dose from a previously dispensed, properly labeled container (including a unit dose container);
(2) Verifying it with the directions on the label; and
(3) Taking orally, injecting, inserting, or otherwise administering the medication;
ii. A requirement that self-administration be permitted only upon a written order of the prescriber;
iii. Storage of drugs;
iv. Labeling of drugs;
v. Methods for documentation in the patient's medical record of self-administered drugs;
vi. Training and education of patients in self-administration and the safe use of drugs; and
vii. Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

6. Policies and procedures for documenting adverse drug reactions, medication errors, and drug defects. Allergies shall be documented in the patient's medical record and on its outside front cover;

7. Policies and procedures for ensuring the immediate delivery of stat. doses. Stat. (statim) means immediately;

8. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the pharmacy committee of the facility. A list shall be maintained of floor stock drugs and the amounts of such drugs stored throughout the facility;

9. Policies and procedures for discontinuing drug orders, including, but not limited to, policies and procedures for the following:

i. The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered; and
ii. Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

10. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

11. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

12. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

i. Provision for a verifiable record system for controlled drugs;
ii. Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and
iii. In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation, including the signature of a second person who shall witness the disposition; and

13. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage to be provided in each nursing area. Authoritative, current antidote information and the telephone number of the regional poison control center shall also be provided in each nursing area. Current Federal and State drug law information shall be available to the pharmaceutical service.

8:43F-10.5 Storage of drugs

(a) All drugs shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use. (The word "medication" is used interchangeably with the word "drug" in this subchapter. "Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39.)

(b) All drugs shall be stored in accordance with manufacturers' instructions. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing area. The refrigerator shall have a thermometer to indicate temperature in conformance with USP (United States Pharmacopoeia) requirements.

(c) All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs.

(d) Drugs for external use shall be kept separate from drugs for internal use.

(e) At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored and shall maintain a record of such inspections.

(f) A unit dose drug distribution system shall be established and implemented within three years of the effective date of this chapter. "Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

1. At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time.

2. Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications.

3. If the facility repackages medications in single unit packages, the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and the manufacturer's or distributor's name.

4. Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility.

SUBCHAPTER 11. DIETARY SERVICES

8:43F-11.1 Provision of meals

The adult day health care facility shall provide a minimum of one meal per day to patients, directly in the facility. The meal shall supply at least one-third (1/3) of the daily caloric and protein requirements recommended by the Nutrition Board of the National Academy of Sciences, National Research Council, and shall contain three or more

menu items, one of which is or includes a high quality protein food such as meat, fish, eggs, or cheese.

8:43F-11.2 Designation of dietitian

(a) The facility shall designate a dietitian to be responsible for the direction, provision, and quality of the dietary service. The dietitian shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dietary service;

2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided as specified in the dietary portion of the patient plan of care and are coordinated with other patient care services to provide a continuum of care for patients;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Providing nutritional counseling.

8:43F-11.3 Responsibilities of dietitians

(a) In accordance with written job descriptions, dietitians shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary portion of the patient plan of care on the basis of the assessment, providing dietary services to the patient as specified in the dietary portion of the patient plan of care, reassessing the patient, and revising the dietary portion of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

8:43F-11.4 Food service supervisor

The facility shall designate a food service supervisor who, if not a dietitian, functions with scheduled consultation from a dietitian. When meals are prepared in the facility, the food service supervisor shall be present in the facility.

8:43F-11.5 Requirements for dietary services

(a) The dietary service shall comply with the provisions of N.J.A.C. 8:24.

(b) A current diet manual shall be available to the dietary service personnel and to the nursing service personnel.

(c) Meals shall be planned, prepared, and served in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in any continuous seven day period;

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary service for at least 30 days;

4. Diets served shall be consistent with the diet manual and shall be served in accordance with physicians' orders;

5. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

6. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

7. Between-meal nourishments shall be provided and beverages shall be available at all times for each patient, unless medically contraindicated as documented by a physician in the patient's medical record;

8. Substitute foods and beverages of equivalent nutritional value shall be available to all patients;

9. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the patient and the meal refused or missed;

10. Self-helf feeding devices shall be provided;

11. All meals shall be attractive when served to patients;

12. All patients shall eat in a dining area with sufficient space to accommodate all patients simultaneously at each meal; and

13. A record shall be maintained for each patient, identifying the patient by name, diet order, and other information, such as meal patterns when on a calculated diet, and allergies. Such record shall be available in the dining area.

SUBCHAPTER 12. PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH-LANGUAGE PATHOLOGY SERVICES

8:43F-12.1 Provision of physical therapy, occupational therapy, and speech-language pathology services

The facility shall provide physical therapy, occupational therapy, and speech-language pathology services.

8:43F-12.2 Designation of physical therapist, occupational therapist, and speech-language pathologist

(a) The facility shall designate a physical therapist, occupational therapist, and speech-language pathologist who shall be responsible for the direction, provision, and quality of the physical therapy, occupational therapy, and speech-language pathology service, respectively. The physical therapist, occupational therapist, and speech-language pathologist shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the physical therapy, occupational therapy, and speech-language pathology service, respectively;

2. Participating in planning and budgeting for the physical therapy, occupational therapy, and speech-language pathology service, respectively;

3. Ensuring that services are provided as specified in the physical therapy, occupational therapy, and speech-language pathology portions of the patient plan of care, respectively, and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for physical therapy, occupational therapy, and speech-language pathology personnel, respectively, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:43F-12.3 Responsibilities of physical therapy, occupational therapy, and speech-language pathology personnel

(a) In accordance with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq., for physical therapy personnel, and in accordance with the State of New Jersey Audiology and Speech-Language Pathology Practice Act, N.J.S.A. 45:3B-1 et seq., for speech-language pathology personnel, and in accordance with written job descriptions, each physical therapist, occupational therapist or speech-language pathologist shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the physical therapy, occupational therapy, or speech-language pathology needs, respectively, of the patient, preparing the physical therapy, occupational therapy, or speech-language pathology portion, respectively, of the patient plan of care on the basis of the assessment, providing services as specified in the physical therapy, occupational therapy, or speech-language pathology portion, respectively, of the patient plan of care, reassessing the patient, and revising the physical therapy, occupational therapy, or speech-language pathology portion, respectively, of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

SUBCHAPTER 13. SOCIAL WORK SERVICES

8:43F-13.1 Provision of social work services

The facility shall provide social work services to patients, directly in the facility.

8:43F-13.2 Designation of social worker

(a) The facility shall designate a social worker who shall be responsible for the direction, provision, and quality of the social work service. The social worker shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the social work service;

2. Participating in planning and budgeting for the social work service;

3. Ensuring that services are provided as specified in the social work portion of the patient plan of care and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for social work service personnel and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

(b) A social worker shall provide social work services in the facility for at least 30 minutes per week per patient equivalent, calculated on the basis of the daily census.

(c) A social worker with a master's degree in social work shall provide at least four hours of social work consultation per month to the social workers of the facility who do not have a master's degree in social work.

8:43F-13.3 Responsibilities of social workers

(a) In accordance with written job descriptions, each social worker shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the social care needs of the patient, preparing the social work portion of the patient plan of care on the basis of the assessment, providing services, including counseling, as specified in the social work portion of the patient plan of care, reassessing the patient, and revising the social work portion of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

(b) The social care assessment shall be initiated prior to or upon admission, after an initial interview with the patient and/or the patient's family. The social care assessment shall include a social history, including family background, and assessment of the patient's education, employment, interests, activities, organizational memberships, psychosocial functioning, and relationships with family and friends.

SUBCHAPTER 14. PATIENT ACTIVITIES SERVICES

8:43F-14.1 Provision of patient activities services

(a) The facility shall provide a planned, diversified program of patient activities to patients, directly in the facility.

(b) Patient activities staff shall arrange a diversity of programs to maintain patients' sense of usefulness and self-respect. Included shall be activities in each of the following categories:

1. Social, such as parties, club meetings, picnics, and other special events;

2. Physical, such as exercise, sports, dancing, and swimming;

3. Creative, such as crafts, poetry, drama, music therapy, art therapy, and gardening;

4. Educational and cultural, such as discussion groups, guest speaker programs, and concerts;

5. Spiritual, such as religious services;

6. Awareness, including, for example, cognitive and sensory individual and group stimulation for patients; and

7. Community-integrating, such as visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs.

(c) The facility shall provide patient activities services for at least 10 hours per week for every 15 patient equivalents, calculated on the basis of the daily census.

(d) Patient activities programs shall take place in individual and group settings.

(e) Patients shall participate in patient activities programs regardless of the patients' financial status.

8:43F-14.2 Designation of patient activities director

(a) The facility shall designate a patient activities director who shall be responsible for the direction, provision, and quality of the patient activities service. The patient activities director shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the patient activities service;

2. Participating in planning and budgeting for the patient activities service;

3. Ensuring that services are provided as specified in the patient activities portion of the patient plan of care and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for patient activities personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Posting a current monthly patient activities schedule where it can be read by patients, staff, and visitors, and maintaining a record of such schedules for one year.

8:43F-14.3 Responsibilities of patient activities personnel

(a) In accordance with written job descriptions, each patient activities staff member shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the patient activities needs of the patient, preparing the patient activities portion of the patient plan of care on the basis of the assessment, providing patient activities services as specified in the patient activities portion of the patient plan of care, reassessing the patient, and revising the patient activities portion of the patient plan of care. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient plan of care; and

3. Writing clinical notes and progress notes.

SUBCHAPTER 15. DENTAL SERVICES, LABORATORY SERVICES, AND RADIOLOGICAL SERVICES

8:43F-15.1 Provision of dental services

(a) Dental services shall be provided to patients, including, but not limited to, examination, oral prophylaxis, and emergency dental care to relieve pain and infection.

(b) If dental services are provided in the facility, the dentist shall document in the patient's medical record all dental services provided, at the time services are provided.

8:43F-15.2 Provision of laboratory and radiological services

(a) Facilities providing laboratory services shall be licensed or approved by the Department.

(b) Facilities providing radiological services shall be licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:43F-16.1 Emergency plans and procedures

(a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergency, equipment breakdown, fire, or other disaster.

(b) The facility shall maintain in the nursing area emergency equipment and an emergency medication kit approved by the pharmacy committee.

(c) Procedures for emergencies shall specify persons to be notified, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating patients, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(d) The emergency plans and all emergency procedures shall be conspicuously posted throughout the facility. Personnel shall be trained in the location and use of emergency equipment in the facility.

(e) In the event that the facility is unable to provide services to patients as scheduled due to the occurrence of an emergency, the facility shall immediately notify these patients of the change in schedule.

8:43F-16.2 Drills and tests

(a) Simulated drills of emergency plans shall be conducted at least four times a year and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills shall include at least one drill for emergencies due to fire. The facility shall conduct at least one drill per year for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (NFPA) requirements.

SUBCHAPTER 17. PATIENT RIGHTS

8:43F-17.1 Policies and procedures regarding patient rights

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall receive in-service education concerning the implementation of policies and procedures regarding patient rights.

(c) The facility shall comply with all applicable State and Federal statutes and rules concerning patient rights, including N.J.S.A. 52:27G-7.1 et seq. The State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall be notified of any suspected case of patient abuse or exploitation pursuant to N.J.S.A. 52:27G-7.1 et seq., if the patient is 60 years of age or older.

8:43F-17.2 Rights of each patient

(a) Patient rights, policies, and procedures shall ensure that, at a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by the patient's written acknowledgement prior to or upon admission, and receives an explanation, in terms that the patient can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for the patient's care, and of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is assured of care in accordance with the patient plan of care, is informed of the patient plan of care, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of the patient's care, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for the patient's welfare or that of other patients, upon the written order of the patient's physician, as documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility, including transfer or discharge for nonpayment for services (except as prohibited by sources of third-party payment), the patient and the patient's family shall be given at least 30 days advance written notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of the patient's medical record, in accordance with the facility's policies and procedures;

7. Is free from mental and physical abuse, free from exploitation, and free from the use of chemical and physical restraints. Drugs and other medications shall not be used for punishment or for convenience of facility personnel;

8. Is assured confidential treatment of the patient's records and disclosures, and shall have the opportunity to approve or refuse their release to any individual, except in the case of the patient's transfer to another health care facility or as required by law or third-party payment contract;

9. Is treated with courtesy, consideration, respect, and recognition of the patient's dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during toileting, bathing, and other activities of personal hygiene;

10. Is not required to perform work for the facility unless the work is part of the patient plan of care and is performed voluntarily by the patient. Such work shall be in accordance with local, State, and Federal laws and rules;

11. May associate and communicate privately with persons of the patient's choice and may join with other patients or individuals within or outside the facility to work for improvements in patient care;

12. Is allowed to conduct private telephone conversations;

13. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

14. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may not be restricted or prohibited, unless the patient consents and the restriction or prohibition is documented by the patient's physician in the patient's medical record;

15. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

16. Is encouraged and assisted to exercise rights as a patient and as a citizen, may voice grievances on behalf of the patient or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(b) The administrator shall provide all patients and/or their families with the name, address, and telephone number of the following offices where complaints may be lodged:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
Telephone: (800) 792-9770

and

State of New Jersey
Office of the Ombudsman for the
Institutionalized Elderly
CN 808
Trenton, New Jersey 08625
Telephone: (800) 624-4262

(c) The administrator shall also provide all patients and/or their families with the name, addresses, and telephone numbers of the following offices where information concerning Medicare coverage may be obtained:

Legal Assistance for Medicare Patients
c/o Community Health Law Project
530 Cooper Street
Camden, New Jersey 08102
Telephone: (609) 964-0030
or
7 Glenwood Avenue
East Orange, New Jersey 07017
Telephone: (201) 672-6073

(d) The telephone numbers listed in (a) through (c) above shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 18. DISCHARGE PLANNING SERVICES

8:43F-18.1 Discharge plan

(a) The facility shall provide discharge planning services to patients.

(b) Each patient shall have a written discharge plan, which may be part of the patient plan of care.

(c) The discharge plan shall include at least an evaluation of the patient's needs, goals for discharge, and instructions given to the patient and/or the patient's family for care following discharge.

(d) The patient and, if indicated, family members shall participate in developing the plans for discharge.

8:43F-18.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for discharge planning services;
2. The time period for initiating, reviewing, and revising each patient's discharge plan;
3. Use of the multidisciplinary team in discharge planning; and
4. Criteria for patient discharge.

SUBCHAPTER 19. MEDICAL RECORDS

8:43F-19.1 Maintenance of medical records

(a) A current, complete medical record shall be maintained for each patient and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.

(c) A record system shall be maintained in which the patient's complete medical record is filed as one unit in one location within the facility.

8:43F-19.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:43F-19.3 Contents of medical records

(a) The complete patient medical record shall include, but not be limited to, the following:

1. Patient identification data, including name, date of admission, address, date of birth, race, religion (optional), sex, referral source, payment plan, marital status, and the name, address, and telephone number of the person(s) to be notified in an emergency, and travel directions to the patient's home;
2. The patient's signed acknowledgement that the patient has been informed of, and given a copy of, patient rights;
3. An assessment of the patient's home environment, based upon a visit to the patient's home;
4. A summary of the admission interview;
5. Documentation of the medical history and physical examination, signed and dated by the physician;
6. Patient assessments developed by each service providing care to the patient;
7. A patient plan of care;
8. Clinical notes, which shall be entered on the day service is rendered;
9. Progress notes;
10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;
11. A record of self-administered medications, if the patient self-administers medications;
12. Documentation of allergies in the medical record and on its outside front cover;
13. Documentation of dental, laboratory, and radiological services provided;
14. A record of referrals to other health care providers;
15. Documentation of consultations;
16. Any signed written informed consent forms;
17. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;
18. All orders for treatment, medication, and diets, signed by a physician. Physician orders for speech-language pathology, physical therapy, and occupational therapy services shall include specific modalities and the frequency of treatment;
19. The discharge plan; and
20. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:43F-19.4 Requirements for entries

(a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber, in accordance with the laws of the State of New Jersey.

(b) All entries in the patient medical record shall be legible and signed and dated by the person entering them.

8:43F-19.5 Medical records policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:

1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information.
2. The specific period of time within which the medical record shall be completed following patient discharge, and disciplinary action for non-compliance;
3. The transfer of patient information when the patient is transferred to another health care facility; and
4. The release and/or provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical record;

ii. Policies and procedures regarding patient access to the patient's medical record;

iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated, as documented by a physician in the patient's medical record, for the patient to have access to or obtain copies of the record; and

iv. Procedures to ensure that the patient's medical record is provided within 30 calendar days of the written request.

8:43F-19.6 Preservation, storage, and retrieval of medical records

(a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.

(b) If the facility plans to cease operation, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records will be stored and of methods for their retrieval.

SUBCHAPTER 20. INFECTION PREVENTION AND CONTROL SERVICES

8:43F-20.1 Administrator's responsibilities

(a) The administrator shall ensure the development and implementation of an infection prevention and control program.

(b) The administrator shall designate a person who shall be responsible for the direction, provision, and quality of infection prevention and control services. The designated person shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, an organizational plan, and a quality assurance program for the infection prevention and control service.

8:43F-20.2 Infection control policies and procedures

(a) The facility shall establish an infection control committee which shall include the medical director and representatives from at least administration and the nursing service.

(b) The infection control committee shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control, including, but not limited to, policies and procedures regarding the following:

1. A definition of nosocomial infection;
2. A system for identifying and monitoring nosocomial infections;
3. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;
4. Infection control and isolation, in accordance with the Centers for Disease Control and Occupational Safety and Health Administration publication, "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV)", OSHA Instruction CPL 2-2.44A, August 15, 1988;
5. Aseptic technique, employee health, and staff training;
6. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;
7. Surveillance techniques to minimize sources and transmission of infection;
8. The prevention of decubitus ulcers;
9. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:
   i. Care of utensils, instruments, solutions, dressings, articles, and surfaces; and
   ii. Selection, storage, use, and disposition of single use and other patient care items; and
10. Collection, handling, storage, decontamination, disinfection, sterilization, and disposal of regulated medical waste and all other solid or liquid waste.

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
or
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

(c) Each service in the facility shall develop written policies and procedures for the infection control program for that service.

8:43F-20.3 Infection prevention measures

(a) The facility shall follow all Category I recommendations in the current editions of the following Centers for Disease Control publications, incorporated herein by reference, unless the infection control committee makes a documented exception for a specific guideline:

1. Guideline for Prevention of Catheter-Associated Urinary Tract Infections;
2. Guideline for Prevention of Intravascular Infections;
3. Guideline for Prevention of Surgical Wound Infections;
4. Guideline for Prevention of Nosocomial Pneumonia; and
5. Guideline for Handwashing and Hospital Environmental Control.

8:43F-20.4 Use and sterilization of patient care items

(a) Single use patient care items shall not be reused. Other patient care items which are reused shall be reprocessed and reused in accordance with manufacturers' recommendations.

(b) Sterilized materials shall be marked with an expiration date and shall not be used subsequent to the expiration date.

(c) Sterilized materials shall be packaged and labeled so as to maintain sterility and so as to permit identification of expiration dates.

(d) Expiration dates shall be assigned to sterilized materials in accordance with the following:

1. Double-wrapped muslin/paper wrappers shall be marked with an expiration date not to exceed one month following sterilization;
2. Heat-sealed paper/plastic wrappers shall be marked with an expiration date not to exceed one year following sterilization; and
3. Self-sealed packaging shall be marked with an expiration date not to exceed the manufacturer's recommendation.

8:43F-20.5 Care and use of sterilizers

(a) Sterilizers shall be kept clean.

(b) Sterilizer drains shall be flushed at least weekly, unless otherwise specified by the manufacturer, and a record of such action shall be maintained.

(c) At the completion of each sterilization load, the time, temperature, and pressure readings shall be checked and recorded.

(d) A record of each sterilization load, including the date, the load number, the contents of the load, and the expiration dates of the contents, shall be maintained for at least one year.

8:43F-20.6 Regulated medical waste

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(b) The facility shall comply with the provisions of 42 U.S.C. 6903 et seq., the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Acts.

SUBCHAPTER 21. HOUSEKEEPING, SANITATION, AND SAFETY

8:43F-21.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry, and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation, and safety services shall be developed and implemented.

8:43F-21.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of equipment.

8:43F-21.3 Patient care environment

(a) The following housekeeping, sanitation, and safety conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;

2. Nonskid wax shall be used on all waxed floors;
3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;
4. All patient areas shall be free of noxious odors;
5. Throw rugs or scatter rugs shall not be used in the facility;
6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;
7. All equipment shall have unobstructed space provided for operation;
8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;
9. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;
10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;
11. Articles in storage shall be elevated from the floor and away from walls;
12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;
13. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater located in an open basement;
14. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in closed metal cabinets or containers;
15. Unobstructed aisles shall be provided in storage areas;
16. A program shall be maintained to keep rodents, insects, vermin, and birds out of the facility;
17. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;
18. All solid or liquid waste which is not regulated medical waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;
19. Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be unobstructed and connected to the sanitary sewage disposal system;
20. Plastic bags shall be used for solid waste removal. Plastic bags used for solid waste removal shall be designated by the manufacturer as "medium" or "heavy" weight or their equivalent;
21. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;
22. Wastebaskets and ashtrays shall be made of noncombustible materials;
23. Latex foam pillows shall be prohibited;
24. The temperature of the hot water used for bathing and handwashing shall not exceed 110 degrees Fahrenheit (43 degrees Celsius);
25. Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection; and
26. The temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) when patients are in the facility.

8:43F-21.4 Laundry services

(a) Written policies and procedures shall be established and implemented for the facility's laundry services, including, but not limited to, policies and procedures regarding the following:
1. The storage and transportation of laundry;
2. Collection of soiled laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean laundry and for transporting soiled laundry;
3. Storage of soiled laundry in a ventilated area separate from any other supplies. Soiled laundry shall not be stored, sorted, rinsed, or laundered in patient areas, bathrooms, areas of food preparation and/or storage, or areas in which clean laundry and/or equipment are stored; and
4. Protection of clean laundry from contamination during processing, transporting, and storage.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:43F-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient care services.

8:43F-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:
1. At least annual review of staff qualifications and credentials;
2. At least annual review of staff orientation and staff education;
3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services;
4. Evaluation by patients and their families of care and services provided by the facility;
5. Review of medication errors and adverse drug reactions by the pharmacy committee;
6. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and
7. Establishment of objective criteria for evaluation of the patient care provided by each service.

8:43F-22.3 Measures for corrections and improvements

The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall implement measures to ensure that corrections or improvements are made.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION
Adult Day Health Care Facilities
Standards for Licensure
Physical Plant and Functional Requirements
Proposed New Rules: N.J.A.C. 8:43F-23 and 24

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.
Proposal Number: PRN 1989-579.

Submit comments by December 6, 1989 to:
Joseph A. Dicara
Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, New Jersey 08625-0367
(609) 588-7786

The agency proposal follows:

Summary

The New Jersey State Department of Health has been mandated the responsibility to develop and promulgate rules regarding building require-

ments and fire protection standards for the licensing of adult day health care facilities.

The Department proposes new rules at N.J.A.C. 8:43F-23 and 8:43F-24 for the physical plant and functional requirements for the licensure of adult day health care facilities.

Construction standards which are part of the Physical Plant Standards of the Licensure Manual of Standards for Non-Residential Medical Day Care Facilities are not specifically directed toward the services provided in adult day health care facilities. Therefore, the Department has proposed N.J.A.C. 8:43F-23. The proposed rules are in agreement with the update of the State Uniform Construction Code at N.J.A.C. 5:23.

The functional requirement for adult day health care facilities included in the Manual of Standards for Licensure of Non-Residential Medical Day Care Facilities at N.J.A.C. 8:43F incorporated by reference Section 9, the Ambulatory Care section of HRA 79-14500, "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities." N.J.A.C. 8:43F-24 has been proposed to include a more specific delineation of the necessary functional requirements for Adult Day Health Care Facilities.

The rules which are being proposed emphasize fire safety and protection of the patients. These rules are proposed in order to comply with new Federal requirements for reimbursement and to comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23. In addition, the design of facilities was planned for a more efficient functional layout, with the emphasis on cutting operational cost and discouraging the construction of wasted space in health facilities.

A summary of the proposed new rules follows:

Proposed N.J.A.C. 8:43F-23.1 addresses standards for construction, alteration or additions of freestanding Adult Day Health Care Facilities.

Proposed N.J.A.C. 8:43F-23.2 addresses standards for construction, alteration or additions of Adult Day Health Care Facilities when located in the same building as a long-term care facility.

Proposed N.J.A.C. 8:43F-24.1 addresses the provisions required for handicapped persons.

N.J.A.C. 8:43F-24.2 sets forth the functional service areas required on site and the areas which may be provided on site or through contractual agreement for adult day health care facilities.

Proposed N.J.A.C. 8:43F-24.3, administration and public areas, is the first of the nine service areas required on-site. This service area must contain an entrance, a public area, an interview space, offices, multipurpose rooms and a storage area.

Proposed N.J.A.C. 8:43F-24.4 is the second required service area, employees' facilities. It requires lockers, lounges and toilets for employees and volunteers.

Proposed N.J.A.C. 8:43F-24.5 mandates housekeeping services, which include a janitor's closet for housekeeping supplies and equipment.

The adult day health care facility is required by N.J.A.C. 8:43F-24.6 to have a service area for social work services. This service shall be designed to provide and insure privacy to the patient, since private interviewing and counseling are elements of this service.

Proposed N.J.A.C. 8:43F-24.7 requires a total of 40 square feet per person for patient activities and dining.

Proposed N.J.A.C. 8:43F-24.8 requires that nursing services shall have space for one chaise lounge, bed, or reclining chair per 10 patients; one toilet for every eight patients; offices, storage area, and an examination room.

Proposed N.J.A.C. 8:43F-24.9 requires that the dietary department shall have an area on site for a conventional food preparation system, a convenience food service system, a catering service or an appropriate combination.

Proposed N.J.A.C. 8:43F-24.10 requires that pharmaceutical services shall contain a dispensing area, locked storage cart and a refrigerator.

Proposed N.J.A.C. 8:43F-24.11 through 8:43F-24.19 address optional services to be provided either on-site or through contract arrangement. The services are laboratory services, radiology services, occupational therapy services, physical therapy services, dental and audiology services, nutritional counseling and laundry services.

Social Impact

N.J.S.A. 26:H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality are of vital concern to the public health". In order to provide for the protection and promotion of the health of inhabitants of the State, adult day health care services of the highest quality and safety must be constructed.

The proposed new rules will provide citizens the assurance that the design and construction of facilities is being monitored and enforced in order to insure that health care is delivered in a safe environment.

The New Jersey State Department of Health, through its delegated authority, is responsible for insuring that health care facilities meet all appropriate construction codes and standards for compliance with State and Federal requirements to guarantee patient safety and to facilitate the services which are being provided.

These rules will be more easily implemented than the previous rules, due to the alternative means of compliance currently provided in N.J.A.C. 5:23, which has been incorporated by reference.

The physical plant will be designed to accommodate the specific needs of the adult day health care patients.

Economic Impact

The new rules contain provisions which lessen or maintain the economic impact created by existing standards at N.J.A.C. 8:43F.

In practice, the impact on existing adult day health care facilities would be minimal. Based on a Department survey, many of the requirements are being performed in these facilities as part of their comprehensive program currently operating under a Department of Health license. Review fees required by the Department will not change as a result of this rulemaking. Fees established by N.J.A.C. 8:31-1.1 are based on the type and size of the project.

The proposed rules present provisions which reflect many of the current practices. These rules are in compliance with the construction requirements of the State Uniform Construction Code, N.J.A.C. 5:23.

Regulatory Flexibility Analysis

The rules in these subchapters place requirements on adult day health care facilities, some of which may be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The proposed new rules, however, do not place recordkeeping and reporting requirements on the facilities. The rules place requirements on facilities for the construction of the physical plant and further require that the Department review and approve all plans for such facilities. The cost of preparation of drawings to be submitted for Department review cannot be accurately estimated, since projects differ in size and complexity. The rules have been designed to minimize the adverse economic impact on small businesses, while ensuring the provision of quality care to patients. The Department of Health has determined that compliance with the proposed new rules is necessary for all facilities which provide adult day health care services, in the interest of public health and safety, and that there should be no differentiation based on business size.

Full text of the proposed new rules follows:

SUBCHAPTER 23. PHYSICAL PLANT

8:43F-23.1 Freestanding facilities

Construction standards for freestanding facilities for new buildings and alterations, renovations, and additions in existing buildings for freestanding adult day health care facilities shall comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23, Use Group Business (B).

8:43F-23.2 Facilities located within long-term care facilities

Construction standards for facilities within long-term care facilities for new buildings and alterations, renovations, and additions for adult day health care facilities in existing buildings which are part of long-term care facilities shall comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23, Use Group I-2 (Institutional).

8:43F-23.3 Plan review; fees

Prior to any construction, plans shall be submitted to the Department and review fees shall be paid, pursuant to N.J.A.C. 8:31-1.1.

SUBCHAPTER 24. FUNCTIONAL REQUIREMENTS

8:43F-24.1 Provision for the handicapped

Facilities shall be available and accessible to the physically handicapped pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23-7, Barrier Free Subcode.

8:43F-24.2 Functional service areas

(a) Each adult day health care facility shall provide the following service areas on site:

1. Administration services;

2. Employee facilities;
3. Housekeeping services;
4. Social work services;
5. Patient activities;
6. Nursing services and medical services;
7. Dietary services; and
8. Pharmaceutical services.

(b) Each adult day health care facility shall contain either on-site or through contract arrangement the following service areas:
1. Laboratory services;
2. Radiology services;
3. Occupational therapy;
4. Physical therapy;
5. Dental and emergency dental services;
6. Nutritional counseling;
7. Eye examination and eye glasses;
8. Speech-language pathology and audiology services; and
9. Laundry services.

8:43F-24.3 Administration and public areas

(a) The entrance shall be located at grade level and shall accommodate wheelchairs.

(b) The public area shall include:
1. Wheelchair storage;
2. Public toilets;
3. Public telephone(s); and
4. Drinking fountain(s).

(c) Interview space(s) for private interviews related to credit and admission shall be provided.

(d) General or individual office(s) for business transactions, records, administrative, and professional staffs shall be provided.

(e) Clerical space or rooms for typing, clerical work, and filing shall be provided.

(f) Multipurpose room(s) equipped for visual aids shall be provided for conferences, meetings, and health education purposes.

(g) General storage facilities for supplies and equipment shall be provided as needed for continuing operation.

8:43F-24.4 Employee facilities

Employee facilities, such as lockers, lounges and toilets, shall be provided for employees and volunteers.

8:43F-24.5 Housekeeping services

A janitor's closet shall be provided for each floor which shall contain a service sink and storage for housekeeping supplies and equipment.

8:43F-24.6 Social work services

The social work service area shall include office space for private interviewing and counseling, waiting space, record storage area and secretarial office space.

8:43F-24.7 Patient activities area

(a) A facility shall have a total of 40 square feet per person for patient activities and dining.

(b) Storage space shall be provided for recreational equipment and supplies.

(c) An office or area for the patient activities director shall be provided.

8:43F-24.8 Nursing service

(a) There shall be space for one chaise lounge, bed, or reclining chair for every 10 patients, based upon the daily census.

(b) There shall be one toilet and lavatory for every eight patients.

(c) Office space for nursing staff shall be provided.

(d) A storage area for equipment and supplies shall be provided.

(e) An examination room or private treatment space shall be provided and shall have a minimum floor area of 80 square feet, including an area for the storage of patient charts. Handwashing facilities and a counter or shelf space for writing shall be provided.

8:43F-24.9 Dietary services

(a) The construction, equipment and installation of food service facilities shall meet the requirements of the functional program. Services may consist of an on-site conventional food preparation system, a convenience food service system, a catering service or an appropriate combination thereof. The following facilities shall be provided to implement the food service selected:
1. A control station for receiving food supplies;
2. Storage facilities for food supply, including cold storage items;
3. Food preparation facilities as follows:

i. Conventional food preparation system with space and equipment for preparing, cooking and baking;

ii. Convenience food service system, such as frozen prepared meals, bulk packaged entrees, individually packaged portions, and contractual commissary services with space and equipment for thawing, portioning, cooking, and/or baking;

4. Handwashing facility(ies), located in the food preparation area;
5. Warewashing space, which shall be located in a room or an alcove separate from the food preparation and serving area;
6. Waste storage facility(ies), which shall be located in a separate room easily accessible to the outside for direct waste pickup or disposal;
7. Office(s) or desk space(s) for dietitian(s) or the dietary service manager;
8. Toilets for dietary staff, with handwashing facility(ies) immediately available; and
9. A janitor's closet located within the dietary department and containing a floor receptor or service sink and a storage area for housekeeping equipment and supplies.

8:43F-24.10 Pharmaceutical services

(a) The following shall be provided for pharmaceutical services:
1. A dispensing area with a handwashing facility;
2. Space for a locked storage cart; and
3. Space for a refrigerator.

8:43F-24.11 Laboratory services

(a) Laboratory services shall be provided within the medical day care facility or through contract arrangement with a hospital or laboratory service.

(b) If these services are provided on contract, the following laboratory facilities shall also be provided in the facility:
1. Laboratory work counter(s), with sink; and
2. Specimen collection facilities with a water closet and lavatory. Blood collection facilities shall have seating space, a work counter, and handwashing facilities.

8:43F-24.12 Radiology services

Radiology services shall be available. If provided on-site, a portable x-ray with film processing facilities may be used, if required by the program.

8:43F-24.13 Occupational therapy service

(a) If occupational therapy services are provided on site, the following areas shall be provided:
1. Office space;
2. Waiting space;
3. Activity areas;
4. Storage for supplies and equipment; and
5. Patients' dressing areas, showers, lockers and toilet room.

(b) The areas designated in (a) 1, 2, 4 and 5 above may be planned and arranged for shared use by physical therapy patients and staff, if the program reflects this sharing concept.

8:43F-24.14 Physical therapy service

(a) If physical therapy services are provided on site, the following spaces shall be provided:
1. Office space;
2. Waiting space;
3. Treatment area(s);
4. Exercise area;
5. Storage for clean linen, supplies and equipment; and
6. Patient dressing areas, showers, lockers, and toilet.

(b) The areas designated in (a) 1, 2, 5 and 6 above may be planned and arranged for shared use by occupational therapy patients and staff if the program reflects this sharing concept.

8:43F-24.15 Dental and emergency dental services

(a) If dental service is to be provided on-site, a dental chair with light and drill, and a lavatory shall be provided.

(b) If the program does not require a room, a portable chair may be used.

8:43F-24.16 Eye examination services

If eye examination services are provided on-site, a special purpose examination room shall be provided and designed and equipped to accommodate service.

8:43F-24.17 Speech and language pathology and audiology services

(a) If speech and language pathology and audiology services are provided on-site, the following shall be provided:

1. Office(s) for the therapist;
2. Space for evaluation and treatment; and
3. Space for equipment and storage.

8:43F-24.18 Nutritional counseling

Nutritional counseling may be provided in the dietitian's office or in a conference room, based on program requirements.

8:43F-24.19 Laundry service

(a) If laundry services are provided on-site, the following areas shall be provided.

1. A laundry processing room;
2. A soiled linen receiving, holding, and sorting room with handwashing facility;
3. Storage for laundry supplies;
4. A clean linen storage, issuing and holding room or area; and
5. A janitor's closet, containing a floor receptor or service and storage space for housekeeping equipment and supplies.

(b) If linen is processed off-site, the following areas shall be provided:

1. A soiled linen holding room or area; and
2. A clean linen receiving, holding, inspection, and storage room(s) or area.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Acute Renal Dialysis Services Standards for Licensure Physical Plant Requirements

Proposed New Rules: N.J.A.C. 8:43G-30.13 through 30.17

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1989-578.

Submit comments by December 6, 1989, to:

Joseph A. DiCara
Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey Department of Health
300 Whitehead Road, CN 367
Trenton, New Jersey 08625-0367
(609) 588-7786

The agency proposal follows:

Summary

The New Jersey State Department of Health has been mandated the responsibility to develop and promulgate building requirements and fire protection standards for the licensing of acute renal dialysis services.

The Department is proposing new rules at N.J.A.C. 8:43G-30.13 through 30.17, which contain the physical plant requirements for acute renal dialysis services and which will be made part of the hospital licensure standards proposed at 21 N.J.R. 2926(a). Current rules covering physical plant requirements, at N.J.A.C. 8:43B, have been proposed for repeal at 21 N.J.R. 2925(a).

Specific construction standards regarding acute renal dialysis services are necessary and are being proposed at this time. The proposed rules are in agreement with the Uniform Construction Code at N.J.A.C. 5:23-3.2, which substitutes the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 Edition) in place of Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (HRS-M-HF)84-1.

The detailed treatment and service area requirements for acute renal dialysis services are being added to the Manual of Standards for Hospitals.

The rules which are being proposed emphasize fire safety and protection of the patients. These rules are proposed in order to comply with new Federal requirements for reimbursement and to comply with the New Jersey Uniform Construction Code, N.J.A.C. 5:23. In addition, the design of facilities was planned for a more efficient functional layout, with the emphasis on cutting operational cost and discouraging the construction of wasted space in health facilities.

A summary of the proposed new rules follows.

Proposed N.J.A.C. 8:43G-30.13 addresses standards for construction, alteration, or renovation of acute renal dialysis services.

Proposed N.J.A.C. 8:43G-30.14 sets forth the requirements for a treatment area. The treatment area shall be an open planned area with space for each machine of 100 square feet. Cubicle curtains, nurse stations and charting facilities shall be located in this area. Handwashing facilities shall be provided at a ratio of one handsink per every three stations.

Proposed N.J.A.C. 8:43G-30.15 sets forth the requirements of service areas to support the treatment area. The service areas shall be designated as preparation space, separate clean and soiled work or utility rooms. Clean and soiled utility rooms shall have a minimum of 80 square feet each. If clean linen and clean utility room are combined they shall contain a minimum of 120 square feet. If soiled holding and soiled utility room are combined they shall contain a minimum of 120 square feet. A separate janitor's closet, a separate employee kitchen or dining area shall be provided in the suite. Office space for medical director and nurse supervisor and a lounge, locker room and staff toilet shall be available for staff. A separate toilet room shall be provided for patients. A drug distribution station, nourishment station, equipment and emergency storage room and storage space for wheelchair and stretchers shall be provided. Storage for renal waste shall be provided. Patients' toilet room doors shall be equipped with emergency hardware. If a home training room is provided, it must be provided with a sink for handwashing.

Proposed N.J.A.C. 8:43G-30.16 requires a separate emergency generator room with an emergency generator which will operate for a minimum of four hours. The water supply systems shall provide a minimum pressure of 15 pounds per square inch for machines when in use on an upper floor.

Proposed N.J.A.C. 8:43G-30.17 sets forth the requirements for pediatric dialysis services. The pediatric unit shall be housed separately from the adult unit. The area of each pediatric patient dialysis station shall be the same as an adult station. The area housing the pediatric dialysis unit must be enclosed with fixed partitions. The pediatric dialysis unit shall have its own handwashing facilities. The service areas may be shared with the adult unit.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality are of vital concern to the public health." In order to provide for the protection and promotion of the health of inhabitants of the State, acute renal dialysis services of the highest quality and safety must be constructed.

The proposed new rules will provide citizens the assurance that the design and construction of facilities is being monitored and enforced in order to insure that health care is delivered in a safe environment.

The New Jersey State Department of Health, through its delegated authority, is responsible for insuring that health care facilities meet all appropriate construction codes and standards for compliance with State and Federal requirements to guarantee patient safety and to facilitate the services which are being provided.

The new rules will be more easily implemented than requirements previously imposed by the Department in N.J.A.C. 8:43B, due to the alternative means of compliance contained in N.J.A.C. 5:23 and the "Guidelines for Construction and Equipment of Hospital and Medical Facilities" (1987), which are incorporated by reference.

The physical plant will be designed to accommodate the specific needs of the acute renal dialysis patients.

Economic Impact

There will be minimal economic impact resulting from the proposed new rules, since the new standards are not as stringent as the existing standards. The acute renal dialysis services will only be provided in hospitals.

In practice, the economic impact on existing renal dialysis services would be minimal. Based on a current Department survey, many of the requirements of these rules are being provided in the renal dialysis service as part of their comprehensive program currently operating under the general Department of Health license requirements of N.J.A.C. 8:43B.

The proposed rules present provisions which reflect many of the current practices. These rules are in compliance with the construction requirements of the State Uniform Construction Code, N.J.A.C. 5:23.

Fees based on size and type of project will be required, in accordance with N.J.A.C. 8:31-1.1, proposed at 21 N.J.R. 2447(a).

Regulatory Flexibility Statement

Acute renal dialysis services are currently provided within hospitals which are not considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. All the hospitals employ more than 100 people. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

8:43G-30.13 Physical plant general compliance for new construction, alteration, or renovation; mandatory

(a) The hospital shall comply with the New Jersey Uniform Construction Code (N.J.A.C. 5:23, Use Group I-2), standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs and the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 edition, as published by The American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006 Pub. No. ISB NO 913962-96-1). In order to avoid conflict between N.J.A.C. 5:23 and the other standards listed above, Sections 501.3, 610.4.1, 704.0, 705.0, 706.0, 708.0 and 916.5 of the 1987 BOCA Basic Building Code of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities.

(b) The hospital shall submit plans and specifications to the Construction and Monitoring Program, Health Facilities Evaluation, New Jersey Department of Health, CN 367, Trenton, N.J. 08625-0367, for review and approval prior to construction, alteration, or renovation.

(c) Prior to approval, plan review fees shall be submitted, in accordance with N.J.A.C. 8:31-1.1.

8:43G-30.14 Treatment area requirements for acute renal dialysis services; mandatory

(a) The treatment area for acute renal dialysis services shall be an open planned area separated from administrative and service areas.

(b) The floor area allocated for each machine shall be 100 square feet, with a net usable area of 80 square feet, with 30 inches of clear space maintained around each machine or lounge. Machines may be installed flush against the wall on one side only. There shall be a four foot space between beds or lounges.

(c) Cubicle curtains around each patient station shall be provided for privacy and dignity.

(d) A nurses' station shall be located within the open treatment dialysis area and shall provide visibility of all patients' stations.

(e) Charting facilities for nurses and doctors shall be located adjacent to the nurses' station.

(f) Handwashing facilities shall be provided at a ratio of one handsink per every three stations and shall be distributed throughout the dialysis area.

8:43G-30.15 Service areas requirements for acute renal dialysis service; mandatory

(a) The size and location of each service area for acute renal dialysis services shall be based upon the number of beds or lounges to be served. The following service areas shall be located within the dialysis suite and readily available to the open treatment area:

1. Preparation space, which shall be adjacent to the open treatment area;

2. Separate clean and soiled work or utility rooms, which shall be within the suite. Soiled and clean utility rooms shall contain a minimum of 80 square feet each. Clean linen and clean utility room may be combined, and if combined, shall contain a minimum of 120 square feet and shall contain handwashing facilities. Soiled holding and soiled utility room may be combined, and if combined, shall contain a minimum of 120 square feet and shall contain handwashing facilities;

3. A separate janitor's closet, which shall be provided exclusively for the renal suite. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment;

4. If a separate employee kitchen or dining area is provided in the suite, it shall be separated from the patient area and shall not be utilized by patients. Employees shall not be permitted to eat in the dialysis treatment area;

5. Office space, which shall be provided for the medical director and nurse supervisor;

6. A lounge, locker room and staff toilet with handwashing facilities, which shall be available for staff;

7. A separate toilet room with handwashing facilities, which shall be provided for patients;

8. A drug distribution station, which may be a medicine preparation room or unit, a self-contained medicine dispensary unit, or another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and contain a work counter with handwashing facilities, refrigerator, and locked storage for biologicals and drugs. A medicine dispensary unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff;

9. A nourishment station, which shall contain a sink equipped for handwashing, equipment for serving nourishment, refrigerator, storage cabinets and ice maker-dispenser unit;

10. Equipment and emergency storage room(s), which may be a combined unit. The size shall be determined by the needs in the program and the equipment to be stored;

11. A storage room, which shall house the working equipment to maintain the equipment applicable to the machines for the dialysis suite. At least one week of operation supplies must be available in the facility. There shall be 70 square feet per machine/station of storage;

12. Storage space, which shall be provided for wheelchairs and stretchers out of direct line of traffic;

13. Storage space for renal waste, which shall be provided within the unit until it is properly disposed;

14. Patient toilet rooms, which shall have doors equipped with hardware which will permit access by staff in any emergency; and

15. Home training rooms or areas, which, if provided, shall be equipped with a sink for handwashing.

8:43G-30.16 Emergency generator and water supply; mandatory

(a) A separate emergency generator room which shall have a one-hour fire rating with an approved fresh air intake and an explosion release. All machines shall be connected to the emergency generator so that all life support machines will operate for at least four hours following a power shutdown or outage.

(b) Water supply systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of 15 pounds per square inch during periods when fixtures and equipment are in use.

8:43G-30.17 Functional requirements for pediatric dialysis services; mandatory

(a) If separate pediatric dialysis services are provided, the services for young children and adolescents shall be housed in a unit separate from the services provided to adults.

(b) The area housing the pediatric dialysis unit shall be located within the treatment area.

(c) The area allocated per patient dialysis station shall be the same net usable square foot area as required in N.J.A.C. 8:43G-30.13.

(d) The area housing the pediatric dialysis unit shall be enclosed with fixed partitions that extend from finished floor to ceiling. Vision panels in partitions are required.

(e) The pediatric dialysis unit shall have handwashing facilities separate from the adult unit.

(f) Pediatric dialysis service areas may be shared with the adult unit.

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Scholarships
Academic Requirements
Proposed Amendment: N.J.A.C. 9:7-4.2

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.
Authority: N.J.S.A. 18A:71-26.8 and 18A:71-26.12.
Proposal Number: PRN 1989-569.

Submit comments by December 6, 1989 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will allow secondary school students who rank one, two, or three in their graduating class at the end of their junior year to automatically qualify for a minimum award of $1,000 under the Distinguished Scholars Program, regardless of SAT scores. Under the current rules, only the top two students in class rank of each school are offered a Distinguished Scholarship regardless of SAT scores.

Social Impact

The proposed amendment allowing the top three students in class rank to qualify for a Distinguished Scholarship will automatically make an additional scholarship available to the 90 schools which currently have no students qualifying on the basis of SAT scores and will provide assistance to approximately 170 additional students ranked number three who are not now eligible because of SAT scores. This amendment will also result in increases both in the number of women offered Distinguished Scholarships, which has been slightly lower than men when using SAT scores, and in the number of all students eligible from the urban school districts.

Economic Impact

Extending Distinguished Scholars Program eligibility to the top three students will not add to the cost of the program because the annual number of scholarships will begin to decline as the projected total number of high school graduates declines over the next five years. The students to whom this amendment extends the program eligibility will benefit through the scholarship award.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not imposed reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment merely allows those secondary school students ranked number three in their graduating class at the end of the junior year to automatically qualify for a Distinguished Scholarship regardless of SAT scores.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

9:7-4.2 Academic requirements

(a)-(b) (No change.)

(c) Distinguished Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 10 percent of the graduating class at the end of the junior year; and

2. SAT scores of 1200 or above at the end of the junior year; or

3. Class rank of one [or], two **or three** in the graduating class at the end of the junior year.

(d)-(i) (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Fiscal Management
Restitution for Items Damaged or Destroyed
Proposed New Rules: N.J.A.C. 10A:2-7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Proposal Number: PRN 1989-570.

Submit comments by December 6, 1989 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish the policies and procedures for the withdrawal of restitution from an inmate's account to compensate a correctional facility for the loss or damage of property.

Social Impact

The proposed new rules will permit correctional facilities within the Department of Corrections to withdraw from the accounts of inmates the costs of the repairs or replacements of items damaged or destroyed when the sanction of restitution is imposed by the Disciplinary Hearing Officer or Adjustment Committee. The proposed new rules will inform inmates of the financial penalty which could result from the damage or destruction of property and thereby contribute to a reduction in the number of incidents of damage and destruction of property.

Economic Impact

The proposed new rules permitting correctional facilities to be reimbursed for the costs of the repair or replacement of property, and the reduced number of incidents of property damage and destruction will result in an increase in the amount of financial resources which will become available for the purchase of additional property and services for inmates.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, record keeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates and the New Jersey Department of Corrections.

CHAPTER 2
FISCAL MANAGEMENT

SUBCHAPTERS 1 THROUGH 6 (RESERVED)

SUBCHAPTER 7. RESTITUTION FOR ITEMS DAMAGED OR DESTROYED

10A:2-7.1 Definition of restitution

"Restitution" means a disciplinary sanction recommended by a Disciplinary Hearing Officer or Adjustment Committee which requires the inmate to compensate the correctional facility for the cost of repairing or replacing an item that has been damaged or destroyed by that inmate.

10A:2-7.2 Imposition of restitution

(a) As a result of disciplinary action taken against an inmate, the Institutional Classification Committee (I.C.C.) may impose restitution as a sanction on an inmate upon the recommendation of:

1. The Disciplinary Hearing Officer; or
2. The Adjustment Committee.

10A:2-7.3 Appeal of restitution

An inmate may appeal the imposition of restitution as a sanction by following the procedures outlined in N.J.A.C. 10A:4-11, Appeals of Disciplinary Decisions.

10A:2-7.4 Amount of restitution

(a) The amount of restitution ordered shall equal the cost of replacement or repair (if possible) of the item(s) damaged or destroyed.

(b) Each correctional facility shall develop written policies and procedures for determining the cost of replacing or repairing an item(s) that has been damaged or destroyed.

10A:2-7.5 Role of the Superintendent

(a) When the sanction of restitution has been imposed, the Superintendent shall:

1. Review the inmate's appeal, if one is submitted; and
2. Affirm or modify the sanction in accordance with N.J.A.C. 10A:4-11.5, Disposition of appeal, as is deemed appropriate.

(b) If the Superintendent affirms the sanction of restitution, the Superintendent shall order the Business Manager to withdraw funds from the inmate's account for the purpose of restitution.

10A:2-7.6 Role of the Business Manager

(a) Upon receipt of the order from the Superintendent, the Business Manager or his or her designee shall remove with the posting of each month's State pay or funds from other sources, any amount of funds in excess of a $15.00 balance from the inmate's account until restitution has been made in full.

(b) Funds collected for restitution must be deposited and recorded in accordance with the Department of Treasury and the Department of Corrections' policies and procedures.

(c) Each removal of funds from an inmate's account shall be noted on the inmate's account's record. The inmate shall be informed in writing of each removal of funds for restitution from the inmate's account and a copy of the notification shall be placed in the inmate's classification folder.

(d) In the event an inmate is transferred to another correctional facility within the Department of Corrections, the Business Manager or his or her designee shall notify the receiving correctional facility and the inmate, in writing, of the remaining restitution balance. The notification shall also request that funds continue to be removed from the inmate's account until restitution has been made in full.

(e) The Business Manager of the receiving correctional facility shall forward all funds collected for restitution to the correctional facility which suffered the loss involved.

(f) In the event an inmate is released with funds due the correctional facility for restitution, the facility shall regard the debt as uncollectable.

(g) Any amount owed by an inmate upon release shall not be deducted from the financial aid an inmate may receive from the Bureau of Parole, New Jersey Department of Corrections.

(a)

THE COMMISSIONER

Administrative Segregation

Proposed Amendments: N.J.A.C. 10A:5-3.1 and 3.2

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-550.

Submit comments by December 6, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:5-3.1(a) to specify that a disciplinary sanction which includes administrative segregation, when imposed by the Disciplinary Hearing Officer at the Edna Mahan Correctional Facility for Women, will be referred to the Institutional Classification Committee (I.C.C.) for confirmation at the Committee's next regularly scheduled meeting. Proposed changes to N.J.A.C. 10A:5-3(f) through (k) specify that a disciplinary sanction which includes administrative segregation, when imposed by a Disciplinary Hearing Officer or Adjustment Committee at an adult correctional facility, other than the Edna Mahan Correctional Facility for Women, will be referred to the Institutional Classification Committee (I.C.C.) for review. The Institutional Classification Committee (I.C.C.) will review the sanction and refer the sanction to the Inter-Institutional Classification Committee (I.I.C.C.) with a recommendation that the sanction be confirmed, modified or overruled. The Inter-Institutional Classification Committee (I.I.C.C.) shall confirm, modify or overrule the sanction of administrative segregation. A proposed change to N.J.A.C. 10A:5-3.2(f) requires the review of the cases of inmates, assigned to an Administrative Segregation Unit for 365 days or less, every 60 days. N.J.A.C. 10A:5-3.2(g) is amended to require the review of the cases of inmates, assigned to an Administrative Segregation Unit for more than 365 days, every six months.

Social Impact

The proposed change to N.J.A.C. 10A:5-3.1(a) will have no significant social impact at the Edna Mahan Correctional Facility for Women because this amendment is not a change in policy at that correctional facility. The proposed changes to N.J.A.C. 10A:5-3(f) through (k) have an impact on the adult male institutions where a large number of administrative segregation sanctions are imposed on a regular basis. This proposed amendment ensures that the decisions of the Disciplinary Hearing Officers or Adjustment Committees to impose the sanction of administrative segregation are thoroughly reviewed, and the process of confirming, modifying or overruling large numbers of these sanctions is expedited. The proposed change to N.J.A.C. 10A:5-3.2(g), which alters from every 60 days to every six months the intervals at which the cases of inmates assigned to Administrative Segregation Units for periods longer than 365 days are reviewed, will result in a more manageable process for reviewing administrative segregation cases which will ensure that appropriate consideration will be given to each case.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rules follows (additions indicated in boldface **thus;** deletions indicated in brackets [thus]).

10A:5-3.1 Admission to Non-Vroom [Administrative Segregation] **administrative segregation**

(a) Whenever the Disciplinary Hearing Officer [/Adjustment Committee] imposes a sanction **at the Edna Mahan Correctional Facility for Women** which includes [Administrative Segregation] **administrative segregation**, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer[/Adjustment Committee] to the Institutional Classification Committee (I.C.C.) for confirmation at [its] **the Committee's** next regularly scheduled meeting.

(b) In considering the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. (No change.)
2. The reason(s) given by the Disciplinary Hearing Officer [Adjustment Committee] for the sanction imposed;

3.-4. (No change.)

(c)-(e) (No change.)

(f) Whenever the Disciplinary Hearing Officer/Adjustment Committee imposes a sanction at an adult correctional facility other than the Edna Mahan Correctional Facility for Women which includes adminis-

trative segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer/Adjustment Committee to the Institutional Classification Committee (I.C.C.) of the correctional facility for review at the Committee's next regularly scheduled meeting.

(g) When reviewing the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;

2. The reason(s) given by the Disciplinary Hearing Officer/Adjustment Committee for the sanction imposed;

3. The inmate's previous disciplinary record; and

4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(h) Upon review of the administrative segregation sanction, the Institutional Classification Committee (I.C.C.) shall submit the sanction to the Inter-Institutional Classification Committee (I.I.C.C.) along with a recommendation to confirm, modify or overrule the sanction and the reason(s) therefor.

(i) Confirmation shall be made where the Inter-Institutional Classification Committee (I.I.C.C.) determines that the administrative segregation sanction is appropriate and within acceptable limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(j) The Inter-Institutional Classification Committee (I.I.C.C.) shall provide written notice to the inmate of the Committee's decision confirming, modifying or overruling the administrative segregation sanction together with the reasons therefor.

(k) A copy of the Inter-Institutional Classification Committee's (I.I.C.C.) notice shall be filed in the inmate's classification folder.

[(f)] **(1)** Not all **adult** correctional facilities within the Department of Corrections contain Administrative Segregation Units. If an inmate receives a sanction which includes administrative segregation, but is housed in a **correctional** facility which does not have an Administrative Segregation Unit, the sanction first must be [confirmed] **reviewed** by the Institutional Classification Committee (I.C.C.) of the correctional facility in which the inmate is housed. The **administrative segregation** sanction shall then be referred to the next regularly scheduled meeting of the Inter-Institutional Classification Committee (I.I.C.C.) **for confirmation. If the sanction is confirmed, the I.I.C.C. shall approve** [which shall provide for] the transfer of the inmate to a correctional facility within the Division of Adult Institutions which has an Administrative Segregation Unit.

10A:5-3.2 Special Administrative Segregation Review Committee (S.A.S.R.C.)

(a)-(e) (No change.)

(f) [Each inmate shall have his or her case reviewed at least once] **An inmate, who has been assigned to an Administrative Segregation Unit for a period of 365 days or less, shall have his or her case reviewed** every 60 days by the S.A.S.R.C. in order to evaluate the inmate's behavior while in the Administrative Segregation Unit.

(g) An inmate, who has been assigned to an Administrative Segregation Unit for a period of more than 365 days, shall have his or her case reviewed by the S.A.S.R.C. every six months, or more frequently if deemed necessary by the S.A.S.R.C., to evaluate the inmate's behavior while in the Administrative Segregation Unit.

Recodify existing (g) through (o) as **(h) through (p)**. (No change in text.)

(a)

THE COMMISSIONER

Mail, Visits and Telephone

Employee Visits with Incarcerated Relatives

Proposed Amendments: N.J.A.C. 10A:18-6.4

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-551.

Submit comments by December 6, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:18-6.4 to clarify the process which must be followed by New Jersey Department of Corrections' employees who wish to visit relatives who are incarcerated within correctional facilities under the jurisdiction of the New Jersey Department of Corrections. The proposed amendment to N.J.A.C. 10A:18-6.4(c) clearly indicates that an employee, who desires to visit a relative incarcerated in a correctional facility under the jurisdiction of the New Jersey Department of Corrections, should submit a written request to the Superintendent of the correctional facility at which the relative is housed. The proposed change to N.J.A.C. 10A:18-6.4(c) also eliminates the requirement that a Department of Corrections' employee submit written notification to an Assistant Commissioner of the desire to visit an incarcerated relative. The proposed deletion of N.J.A.C. 10A:18-6.4(e) eliminates the requirement that the Assistant Commissioner maintain a central file of employees who are known to have incarcerated relatives.

Social Impact

These proposed amendments will eliminate the frequent misinterpretations of the intent of current rule and will expedite the processing of the requests of Department employees who wish to visit with relatives who are incarcerated in Department correctional facilities.

Economic Impact

The proposed amendments will have no significant economic impact because additional resources are not required to implement or maintain these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact on inmates and the New Jersey Department of Corrections.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10A:18-6.4 Employee visits with incarcerated relatives

(a)-(b) (No change.)

(c) [The Assistant Commissioner of the Division that is responsible for the administration of the correctional facility at which an incarcerated relative is assigned shall be notified by the employee, in writing, that the employee wishes to visit the incarcerated relative.] **An employee of the Department of Corrections who wishes to visit a relative incarcerated in a correctional facility under the jurisdiction of the New Jersey Department of Corrections shall submit a written request for permission to visit the incarcerated relative to the Superintendent of the correctional facility at which the relative is housed.**

(d) [Before visits are authorized, the employee shall advise the Superintendent of the appropriate correctional facility that the employee wishes to visit the incarcerated relative.] The Superintendent may schedule the visit during regular visiting hours or at special times, according to the orderly administration and staffing of the correctional facility.

[(e) The Assistant Commissioner of the Division shall maintain a central file of employees of the Department who are known to have incarcerated relatives.]

(a)

THE COMMISSIONER

Records

Procedure for Release of Confidential Inmate or Parolee Records

Proposed Amendment: N.J.A.C. 10A:22-2.6

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-582.

Submit comments by December 6, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:22-2.6 to add a subsection which specifies information, records and documents submitted to the State Parole Board, or prepared and maintained by the State Parole Board as confidential and not to be released by Department of Corrections personnel.

Social Impact

The proposed change to N.J.A.C. 10A:22-2.6(b) will ensure that the Department of Corrections personnel will not release confidential information that has been submitted to or prepared and maintained by the State Parole Board. The proposed changes to N.J.A.C. 10A:22-2.6(c) and (d) will have no significant social impact because they are minor changes in language which were made for the purposes of clarification. These minor language changes do not alter the intent, meaning or context of these subsections in any way.

Economic Impact

The proposed amendments will have no significant economic impact because additional resources will not be needed to implement or maintain these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment impacts on inmates and the New Jersey Department of Corrections and has no significant effect on small businesses.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10A:22-2.6 Procedures for release of confidential inmate or parolee records

(a) (No change.)

(b) Information, files, documents, reports, records or written materials submitted to the State Parole Board, or such information prepared and maintained by or in the custody of State Parole Board personnel pertaining to parole determinations and/or supervision, shall be deemed confidential and shall not be released by New Jersey Department of Corrections personnel (see N.J.A.C. 10A:71-2.1(a) and (c)).

[(b) Only the specific documents or information directly related to the purpose for which the information is sought shall be released.]

(c) The only confidential information which shall be released shall be the specific information that is directly related to the stated purpose for which the information is requested (see N.J.A.C. 10A:22-2.3 and 4).

[(c)]**(d)** Requests for **confidential** information [which are deemed irrelevant, improper or not authorized by law] shall be rejected[.] **when:**

1. The request is unrelated to the stated purpose of the request; and

2. The request is unauthorized by law.

Recodify existing (d) and (e) as **(e)** and **(f)**. (No change in text.)

(b)

THE COMMISSIONER

Notice of Public Hearing

Adult County Correctional Facilities

Proposed Repeal and New Rules: N.J.A.C. 10A:31

Take notice that the Department of Corrections will conduct a **public hearing** on December 6, 1989, at 10:00 A.M. at the Department of Personnel Training Center, 600 College Road East, Princeton, New Jersey. This public hearing concerns the repeal and new rules at N.J.A.C. 10A:31, Adult County Correctional Facilities, as proposed in the September 18, 1989, New Jersey Register at 21 N.J.R. 2853(a).

N.J.A.C. 10A:31 became effective on February 4, 1985, for a period of five years which expires on February 4, 1990. For the sake of clarity, the Department of Corrections proposed that N.J.A.C. 10A:31 be repealed and new rules be adopted in order to incorporate the numerous changes in language, format and organization of material. The proposed new rules establish the minimum criteria which must be satisfied when counties are designing and planning the construction of new adult county correctional facilities, or when existing facilities are being renovated. The proposed new rules also establish guidelines for the provision of custody, programs and services for inmates in adult county correctional facilities. The proposed new rules set forth the abatement process to be utilized when conditions or procedures are discovered in adult county correctional facilities which are in violation of the rules within this chapter and when a county has willfully and continuously failed to initiate corrective action in response to notice.

The **public hearing** will be conducted in a quasi-legislative rather than in a quasi-judicial manner and is opened to interested individuals, representatives of government bodies, companies and associations. This hearing is prescribed by law (see N.J.S.A. 52:14B-4(a)(3)).

Interested persons are invited to participate through written comments or oral presentations at the December 6, 1989, public hearing or through written comments submitted on or before December 6, 1989, by notifying:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, NJ 08625

(c)

STATE PAROLE BOARD

Parole Board Rules

Proposed Readoption with Amendments: N.J.A.C. 10A:71

Authorized By: New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1989-583.

Submit comments by December 6, 1989 to:

Louis Nickolopoulos, Chairman
New Jersey State Parole Board
CN 862
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Parole Board is authorized by The Parole Act of 1979, N.J.S.A. 30:4-123.45 et seq., to promulgate reasonable rules and regulations, consistent with The Parole Act, as may be necessary for the proper discharge of its responsibilities. The first promulgation of the Board's rules and regulations became effective August 7, 1980 and pursuant to Executive Order No. 66 (1978) were scheduled to expire on August 7, 1985. In 1985 the Board readopted the rules and regulations with amendments and said rules and regulations are scheduled to expire on April 15, 1990. The Board has therefore reviewed its rules and regulations and proposes to readopt with amendments N.J.A.C. 10A:71-1 to 8.

Subchapter 1 sets forth the organization rules of the Parole Board. General administration provisions are contained in subchapter 2. Parole

release hearings are governed by subchapter 3, with appeals provided under Subchapter 4. Subchapter 5 contains the rules for suspending or rescinding a parole date. Parole supervision is subject to subchapter 6. Rules for the revocation of parole are in subchapter 7. Subchapter 8 sets forth the Certificate of Good Conduct rules.

The following summarizes the significant proposed amendments to the rules listed:

1. The proposed amendment to N.J.A.C. 10A:71-1.2 establishing that five Board members shall constitute a quorum of the Board reflects the increase in Board membership from seven to nine members.

2. The proposed amendment to N.J.A.C. 10A:71-1.3 reflects a statutory amendment (N.J.S.A. 30:4-123.55(f)) requiring a full Board hearing in the case of any offenders serving a custodial term for the offense of murder.

3. The proposed amendment to N.J.A.C. 10A:71-3.3 utilizes the offense terminology of the Comprehensive Drug Reform Act of 1986 and specifies that offenses in Category E are crimes of the second degree.

4. The proposed amendments to N.J.A.C. 10A:71-3.16 and 3.17 provide for the referral of a case for a full Board hearing if the offender is serving a custodial term for the offense of murder and if the reviewing Board members or Board panel members, respectively, are of the opinion that parole release is appropriate.

5. The proposed amendment to N.J.A.C. 10A:71-3.19 provides for the scheduling of a full Board hearing in the case of any offender serving a custodial term for the offense of murder.

6. The proposed amendment to N.J.A.C. 10A:71-3.20 provides for the decision-making process of the Board and the issuance of a notice of decision upon the conclusion of a Board hearing conducted in the case of any offender serving a custodial term for the offense of murder.

7. The proposed amendment to N.J.A.C. 10A:71-3.19, recodified as 3.21, provides for the restructuring of the category of crimes in cases of prison inmates; utilizes the offense terminology of the Comprehensive Drug Reform Act of 1986; provides for an increase in the presumptive future parole eligibility terms that could be imposed upon denial of parole (increases proposed in cases of prison and young adult inmates); provides for the future parole eligibility term in the case of murder to be increased or decreased by up to 18 months; provides for the Board's establishment of an extended future parole eligibility term upon the conclusion of a Board hearing; and provides that the proposed amendments to the presumptive future parole eligibility terms are applicable in the cases of prison and young adult inmates whose offenses were committed on or after the effective date of the amendments.

8. The proposed amendment to N.J.A.C. 10A:71-3.21, recodified as 3.23, establishes new presumptive tentative parole release terms and ranges in the cases of juvenile inmates; utilizes the offense terminology of the Comprehensive Drug Reform Act of 1986; and provides that the proposed amendments to the presumptive tentative parole release terms and ranges are applicable in the cases of juvenile inmates whose offenses were committed on or after the effective date of the amendments.

9. The proposed amendment to N.J.A.C. 10A:71-3.29, recodified as 3.31, provides that a comprehensive case review of a juvenile inmate's case may be conducted by one member of the juvenile Board panel; provides for the review of the assessment of the juvenile inmate's case by another juvenile Board panel member; and provides for an in person case review before the juvenile Board panel if the reviewing juvenile Board panel member does not concur in the assessment of the case.

10. The proposed amendment to N.J.A.C. 10A:71-6.3 eliminates the requirement that parole certificates be signed by the Board member(s) who certified parole release.

11. The proposed amendment to N.J.A.C. 10A:71-7.16 deletes specific reference to certain drug offenses since drug offenses are now identified in the Code of Criminal Justice as crimes of the first, second, third or fourth degree or disorderly persons offenses; provides for the establishment of a 10 year eligibility term (or the balance of time remaining, whichever is less) in the case of a parolee who has violated his parole two or more times for the commission of a crime; codifies the practice of requiring a parole violator to serve the balance of his term without parole consideration if the time remaining to be served is less than the future parole eligibility date that could be established pursuant to the appropriate schedule; and provides that the amendments are applicable in the cases of parolees who violate parole on or after the effective date of the amendments (except for the proposed amendment to (f)(6) which is applicable to any inmate presently incarcerated for violation of parole).

Social Impact

The rules to be readopted represent the present administrative procedures of the State Parole Board. In general, the rules pertain to organizational matters, administrative provisions, the parole release hearing process (including calculation of parole eligibility), an appeals process, a suspension or rescission process, the supervision and discharge of parolees, the parole revocation process, and the procedure for the review and granting of certificates of good conduct. The procedures of the State Parole Board impact on the operations of the Department of Corrections, the Bureau of Parole and county jail facilities and require the cooperation of the Department of Corrections, the Bureau of Parole and county jail authorities in order to insure an efficient parole process and the proper discharge of the Board's statutory responsibilities.

The State Parole Board determines if, when and under what circumstances inmates subject to its jurisdiction may be released on parole or returned to an institution from parole following violation of parole terms and conditions. The rules of the Board, therefore, impact directly on adult, young adult and juvenile offenders committed to the custody of the Department of Corrections, certain offenders committed to terms of incarceration in county jail facilities and all offenders released on parole status by authorization of the Board.

New procedures for full Board hearings established pursuant to statutory amendment will impact on the Board's processing of adult inmates serving custodial terms for the offense of murder. The Board's administrative processing of parole certificates will be affected by the proposed elimination of the requirement that parole certificates be executed by certifying Board members.

Certain prison and young adult inmates, upon parole release being denied, will be required to serve longer periods of incarceration prior to their next consideration for parole release. The proposed amendments to the specified juvenile sections of the rules will impact on the juvenile Board panel processing of comprehensive case reviews and juvenile inmates will serve increased periods of incarceration prior to initial parole eligibility. Certain prison, young adult and juvenile offenders who violated parole will serve increased or decreased periods of incarceration, contingent on the degree of drug offense committed while on parole.

Economic Impact

The economic impact of these proposed amendments cannot be readily measured. It is anticipated that the economic impact will be totally incurred by the Department of Corrections, which will have to house certain prison, young adult and juvenile inmates longer than under current practices. The proposed amendments pertaining to eligibility schedules would apply to the cases of inmates who commit offenses on or after the effective date of the amendments. The economic impact on the Department of Corrections therefore may not be realized for several years from the effective date of the amendments in the cases of prison and young adult inmates and probable one to two years from the effective date of the amendments in the cases of juvenile inmates. No other economic impact on the State Parole Board, the Department of Corrections, the Bureau of Parole or county jail facilities is anticipated since the rules to be readopted represent the present administrative procedures by which the State Parole Board functions and processes inmate cases for parole consideration, rescission and revocation.

Regulatory Flexibility Statement

The proposed amendments will have no reporting, recording or compliance requirements for small businesses, as the rules impact only on the Board, the Department of Corrections and inmates. A regulatory flexibility analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:71.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10A:71-1.2 Board meetings

(a)-(g) (No change.)

(h) Except as provided in N.J.A.C. 10A:71-1.4, [four] **five** Board members shall constitute a quorum of the Board.

(i)-(j) (No change.)

10A:71-1.3 Parole release hearings [and], board panel **and board** hearings

(a) The Chairperson shall establish the schedule of all parole release hearings [and], Board panel **and Board** hearings.

(b) (No change.)

(c) In addition to appropriate Board personnel, parole release hearings [and], Board panel **and Board** hearings shall be open only to such persons as authorized by the Board panel **or Board** with the consent of any inmate who may be present for a hearing on his or her case. The inmate's consent shall be in writing and made a part of the Board's record on the inmate.

(d) (No change.)

(e) All parole determinations on individual cases shall be made by a majority vote of the appropriate Board panel members **or, in the case of Board hearings, by a majority vote of the Board members**, subject to the provisions of N.J.A.C. 10A:71-1.4 and 1.5.

(f) (No change.)

10A:71-3.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Primary eligibility date" shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64, based upon the sentence imposed by the court or the Board schedules contained in N.J.A.C. 10A:71-3.3 and 7.16. Such date may be altered pursuant to N.J.A.C. 10A:71-3.4, 3.5 and 3.[19]**21**.

. . .

10A:71-3.2 Calculation of parole eligibility terms

(a)-(b) (No change.)

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1.-6. (No change.)

7. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.[19]**21**, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only. If an inmate's parole eligibility date has passed at the time of the initial parole release hearing, upon the inmate being denied parole and being required to serve an additional term pursuant to N.J.A.C. 10A:71-3.[19]**21**, a new book date shall be established by adding the additional term to the date of the initial parole hearing and by including, in the case of an adult inmate, commutation credits based on the additional term only and any work and minimum custody credits not applied in the computation of the previous parole eligibility date.

(d)-(f) (No change.)

(g) Credits shall reduce parole eligibility terms as follows:

1.-3. (No change.)

4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.[19]**21**, 3.[44]**46** and 7.16.

(h) (No change.)

10A:71-3.3 Parole eligibility for young adult inmates

(a) Except as provided herein, an inmate sentenced to an indeterminate term of years as a young adult inmate shall be primarily eligible for parole consideration on a date established by a hearing officer or the young adult Board panel pursuant to the following schedule of presumptive primary eligibility dates:

PRESUMPTIVE PRIMARY ELIGIBILITY DATES (MONTHS)

LENGTH OF INDETERMINATE TERM
(Years)

CRIME CATEGORY	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	56
Category C	16	28	36	44	52		
Category D	14	20	28	36	44		
Category E	12	14	18	22	22		
Category F	10	10					
Category G	8						

Category A-D (No change.)

Category E [Sale or distribution of] **Manufacturing, distributing or dispensing a** controlled dangerous substance **second degree** [and] **or** possession [of controlled dangerous substance] with intent **to manufacture, distribute or dispense a controlled dangerous substance second degree.**

Category F-G (No change.)

(b)-(j) (No change.)

(k) The prior provisions of (a) [, (b) and (c)] above shall apply to young adult inmates whose offenses were committed prior to [May 6, 1985] **the effective date of the amendments** and shall continue in effect for that purpose. The amendments to (a)[, (b) and (c)] above shall apply to young adult inmates whose offenses were committed on or after [May 6, 1985] **the effective date of the amendments**.

10A:71-3.5 Parole eligibility term reductions (exceptional progress)

(a)-(k) (No change.)

(l) The young adult and juvenile Board panels consider exceptional progress of young adult and juvenile inmates respectively at the time of reviews conducted pursuant to N.J.A.C. 3.3(g), 3.[23]**25**, 3.[25]**27** and 3.[30]**32**.

10A:71-3.9 Inmate statements; adult inmates

(a)-(b) (No change.)

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A-71.3.[48]**50**.

10A:71-3.13 Parole hearing procedures; adult inmates

(a) (No change.)

(b) The hearing officer [or], Board panel **or Board** shall receive as evidence any relevant and reliable documents or testimony.

(c)-(d) (No change.)

(e) The inmate shall have the right to be aided by an interpreter, if such aid is determined to be necessary by the hearing officer [or], Board panel **or Board**.

(f) (No change.)

(g) The inmate shall have the right to request, in writing, a postponement of the hearing at any time, and the hearing officer or Board panel may grant such request. However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-3.[48]**50**.

(h) The decision of the hearing officer [or], Board panel **or Board** shall be based solely on the evidence presented at the hearing.
(i) (No change.)

10A:71-3.14 Scheduling of initial parole hearing; adult inmates
(a) (No change.)
(b) Except as provided in N.J.A.C. 10A:71-3.[48]**50**, such hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.
(c)-(f) (No change.)

10A:71-3.16 Board member review; adult inmates
(a) (No change.)
(b) **Except as provided in (c) below,** [If]**if** such Board member(s) concurs with the recommendation of the hearing officer, the member(s) shall certify parole release as soon as practicable after the parole eligibility date by:
1.-5. (No change.)
(c) Pursuant to N.J.S.A. 30:4-123.55(f), in the case of an offender serving a term for the crime of murder, if such Board members concur with the recommendation of the hearing officer, the Board members shall:
1. Not certify parole release;
2. Automatically refer the case for a hearing before the Board; and
3. Notify in writing the inmate, the Department and the Chairperson within seven days that the case has been referred for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his or her parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.
[(c)-(d)] **(d)-(e)** (No change.)

10A:71-3.17 Board panel hearing; scheduling for adult inmates
(a) (No change.)
(b) Except as provided in N.J.A.C. 10A:71-3.[48]**50**, such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.
(c)-(f) (No change.)

10A:71-3.18 Board panel hearing; notice of decision for adult inmates
(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:
1. Certify parole release, **except as provided in (b) below,** as soon as practicable after the parole eligibility date by:
i.-iv. (No change.)
2. Deny parole and establish a future parole eligibility date pursuant to N.J.A.C. 10A:71-3.[19]**21**.
3. (No change.)
(b) Pursuant to N.J.S.A. 30:4-123.55(f), the Board panel shall not certify parole release in the case of an offender serving a term for the crime of murder. In such a case, if the Board panel is of the opinion that parole release is appropriate, the Board panel shall automatically refer the case for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his or her parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.
[(b)-(d)] **(c)-(e)** (No change in text.)

10A:71-3.19 Board hearing; scheduling for adult inmates
(a) A case referred to the Board by Board members pursuant to N.J.A.C. 10A:71-3.16(c) or by a Board panel pursuant to N.J.A.C. 10A:71-3.18(b) shall be scheduled by the Chairperson for a hearing by the Board.
(b) Such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.
(c) The Chairperson, when practicable, shall notify the chief executive officer of the institution, appropriate Department personnel and the inmate of the designated location and date of the hearing at least seven days prior to the hearing.
(d) It shall be the responsibility of the chief executive officer of the institution and appropriate Department personnel to make the necessary arrangements to have the inmate present at the designated location on the hearing date.
(e) It shall be the responsibility of the chief executive officer of the institution to immediately notify the Chairperson if the inmate is unavailable, for any reason, to attend the hearing.

10A:71-3.20 Board hearing; notice of decision for adult inmates
(a) At the conclusion of the Board hearing, the Board shall take one of the actions as specified in N.J.A.C. 10A:71-3.18(a).
(b) If the Board establishes a parole release date based upon a projected eligibility date, the provisions of N.J.A.C 10A:71-3.18(b) shall apply.
(c) Within 21 days of the Board hearing, the Board shall issue a written notice to the inmate and the Department.
(d) Such notice shall consist of the decision of the Board and, if the Board's decision is to deny or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

10A:71-3.[19]**21** Board panel action; schedule of future parole eligibility dates for adult inmates
(a) Upon determining to deny parole to a prison inmate, a two-member adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.
1. Except as provided herein, a prison inmate serving a sentence for murder [, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section] shall serve [27] **60** additional months.
2. Except as provided herein, a prison inmate serving a sentence for [armed robbery or robbery or serving any minimum-maximum or specific sentence between eight and 14 years for a crime not otherwise assigned pursuant to this section] **aggravated manslaughter, kidnapping first degree, aggravated sexual assault or any other first degree crime** shall serve [23] **36** additional months.
3. Except as provided herein, a prison inmate serving a sentence for [burglary, narcotic law violations, theft, arson or aggravated assault or serving any minimum-maximim or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section] **robbery first degree** shall serve [20] **32** additional months.
4. Except as provided herein, a prison inmate serving a sentence for [escape, bribery, conspiracy, gambling or possession of a dangerous weapon or serving any minimum-maximum or specific sentence less than four years for a crime not otherwise assigned to this section] **manslaughter, robbery second degree, aggravated assault second degree, sexual assault, burglary second degree, manufacturing, distributing or dispensing a controlled dangerous substance second degree, possession with intent to manufacture, distribute or dispense a controlled dangerous substance second degree or any other second degree crime** shall serve [17] **24** additional months.
5. Except as provided herein, a prison inmate serving a sentence for burglary third degree, possession of controlled dangerous substance third degree, theft third degree, arson third degree, aggravated assault third degree, death by auto or any other third degree crime shall serve 20 additional months.
6. Except as provided herein, a prison inmate serving a sentence for criminal sexual contact, forgery fourth degree, unlawful possession of a weapon fourth degree, certain persons not to have weapons, criminal trespass or any other fourth degree crime shall be required to serve the balance of the sentence.
(b) Upon determining to deny parole to a young adult inmate, a two-member young adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.
1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A or B of N.J.A.C. 10A:71-3.3 shall serve [24] **28** additional months.
2. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category C of N.J.A.C. 10A:71-3.3 shall serve [20] **24** additional months.

3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category D of N.J.A.C. 10A:71-3.3 shall serve [10] **20** additional months.

4. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E of N.J.A.C. 10A:71-3.3 shall serve [12] **14** additional months.

5.-6. (No change.)

(c) The future parole eligibility date required pursuant to (a) and (b) above may be increased or decreased by up to nine months **or 18 months in the case of an inmate serving a sentence for murder** when, in the opinion of the Board panel, the [severity] **circumstances** of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.

(d) (No change.)

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.16(c) or 3.18(b), may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. The board shall include in the notice issued pursuant to N.J.A.C. 10A:71-3.20 the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

[(e)-(f)] **(f)-(g)** (No change in text.)

[(g) This section shall apply to all adult inmates denied parole by a board panel or the Board after April 21, 1980.]

(h) The prior provisions of **(a) and** (b) above shall apply to **prison and** young adult inmates**, respectively,** whose offenses were committed prior to [May 6, 1985] **the effective date of the amendments** and shall continue in effect for that purpose. The amendments to **(a) and** (b) above shall be applicable to **prison and** young adult inmates**, respectively,** whose offenses were committed on or after [May 6, 1985] **the effective date of the amendments.**

(i) (No change in text.)

10A:71-3.[20]**22** Notice of tentative parole release dates; juvenile inmates

(a) Upon the admission of a juvenile inmate to a State correctional facility, it shall be the responsibility of the chief executive officer of such facility to promptly notify the Board and provide to the Board such documents and information as specified in N.J.A.C. 10A:71-3.[36]**28** as may be required by the Board in order to establish a tentative parole release date.

(b) (No change.)

(c) Upon establishment of the tentative parole release date pursuant to N.J.A.C. 10A:71-3.[21]**23**, the juvenile Board panel shall notify in writing the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee of the tentative parole release date established. The chief executive officer or designee may further distribute notice of the tentative parole release date as deemed appropriate.

10A:71-3.[21]**23** Establishment of tentative parole release dates; juvenile inmates

(a) Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)		Range (months)	
Murder (N.J.S.A. 2C:11-3(a) (1) or (2))	[100]	**140**	[80-120]	**100-180**
Murder (N.J.S.A. 2C:11-3(a) (3))	[50]	**100**	[40-60]	**80-120**
Crime of First Degree (except Murder)	[20]	**33**	[16-24]	**24-42**
Crime of Second Degree	[16]	**24**	[12-18]	**18-32**
[Sale or Distribution of] **Manufacturing, Distributing or Dispensing a** Controlled Dangerous Substance **second degree**, [or] Possession **with Intent to Manufacture, Distribute or Dispense a** [of] Controlled Dangerous Substance [with Intent to Distribute] **second degree**	[12]	**22**	[10-14]	**17-27**
Crime of Third Degree [or Possession of Controlled Dangerous Substance]	[10]	**19**	[8-12]	**16-22**
Crime of Fourth Degree	[5]	**9**	[4-6]	**6-12**
Disorderly Persons Offense	[1.5]	**4**	[1-2]	**2-6**

(b)-(f) (No change.)

(g) The prior provisions of (a) above shall apply to juvenile inmates whose offenses were committed prior to [May 6, 1985] **the effective date of the amendments** and shall continue in effect for that purpose. The amendments to (a) above shall apply to juvenile inmates whose offenses were committed on or after [May 6, 1985] **the effective date of the amendments.**

10A:71-3.[22]**24** Alteration of tentative parole release dates; juvenile inmates

(a) At the time of a quarterly review, any previously established tentative parole release date may be altered pursuant to N.J.A.C. 10A:71-3.[28]**30** or 3.[30]**32**.

(b)-(d) (No change.)

10A:71-[3.23 and 3.24]**3.25 and 3.26** (No change in text.)

10A:71-3.[25]**27** Quarterly review procedures; juvenile inmates

(a) (No change.)

(b) The purpose of the quarterly review shall be to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine whether the tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.[22]**24** (a), (b) or (c), or to determine whether the tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.[22]**24**(d).

(c)-(d) (No change.)

10A:71-3.[26]**28** (No change in text.)

10A:71-3.[27]**29** Quarterly review notice of decision; juvenile inmates

(a) At the conclusion of the quarterly review conducted by a hearing officer, the hearing officer shall:

1.-3. (No change.)

4. Recommend a decrease in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.[22]**24**(a), (b) or (c); or

5. Recommend an increase in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.[22]**24**(d); or

6. (No change.)

(b)-(d) (No change.)

(e) At the conclusion of the quarterly review conducted by a juvenile Board panel member, the juvenile Board panel member shall render a determination(s) as provided in N.J.A.C. 10A:71-3.[28]**30** (a).

(f) The provisions of N.J.A.C. 10A:71-3.[28]**30**(b), (c) and (d) shall apply to those cases in which the quarterly review is conducted by a juvenile Board panel member.

10A:71-3.[28]**30** Board member review; juvenile inmates

(a) Upon review of the recommendation of the hearing officer, the assigned member of the juvenile Board panel shall render the following determination(s):

1.-2. (No change.)

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.[22]**24**(a), (b) or (c);

4. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.[22]**24**(d);

5.-6. (No change.)

(b)-(c) (No change.)

(d) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required;

1.-6. (No change)

7. If the sentencing court does not approve the parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.[23]**25**. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. (No change.)

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.[23]**25**.

10A:71-3.[29]**31** (No change in text.)

10A:71-3.[30]**32** Juvenile Board panel case reviews

(a) Each juvenile inmate shall be scheduled for a comprehensive case review by the juvenile Board panel **or a juvenile Board panel member** during the twelfth month following the establishment of the tentative parole release date and yearly thereafter instead of the quarterly review otherwise required pursuant to N.J.A.C. 10A:71-3.[23]**25**(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.[23]**25**(a).

(b) The purpose of such case review shall be to monitor the cumulative progress of the juvenile inmate, to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine the reasons for the continued confinement of the juvenile inmate, to determine whether the previously established tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.[22]**24**(a), (b) or (c) and to determine whether the previously established tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.[22]**24**(d).

(c) At the conclusion of the case review conducted by a juvenile Board panel member, the juvenile Board panel member shall recommend an action(s) as provided in (f) below.

1. The juvenile Board panel member shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to a member of the juvenile Board panel for review.

2. If the juvenile Board panel member defers a decision, the juvenile inmate and the reviewing member of the juvenile Board panel shall be advised in writing of the determination upon being rendered.

3. If the juvenile Board panel member recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(d) If the reviewing juvenile Board panel member concurs with the recommendation of the juvenile Board panel member, the determination shall be deemed to be the decision of the juvenile Board panel. The juvenile Board panel shall file a report pursuant to (g) below.

(e) If the reviewing juvenile Board panel member does not concur with the recommendation of the juvenile Board panel member, the juvenile inmate's case shall be referred for a case review before the juvenile Board panel. The juvenile inmate and the chief executive officer of the institution or designee shall be notified in writing that a case review will be scheduled before the juvenile Board panel.

[(c)] **(f)** At the conclusion of the case review, the juvenile Board panel shall render the following determination(s):

1.-2. (No change.)

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.[22]**24**(a), (b) or (c);

4. (No change.)

5. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.[22]**24**(d); or

6. (No change.)

[(d)-(e)] **(g)-(h)** (No change.)

[(f)] **(i)** In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required.

1.-2. (No change.)

3. If the sentencing court approves the reduction in the tentative parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10:71-3.[28]**30** or this section.

4. (No change.)

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10A:71-3.[28]**30** or this section.

6. (No change.)

7. If the sentencing court does not approve the parole of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.[23]**25**. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. (No change.)

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.[23]**25.**

10:A71-[3.31 to 3.33] **3.33 to 3.35** (No change in text.)

10A:71-3.[34]**36** Inmate statements; county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.[33]**35** at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(b) (No change.)

10A:71-[3.35 to 3.38] **3.37 to 3.40** (No change in text.)

10A:71-3.[39]**41** Scheduling of initial parole hearings; county inmates

(a) (No change.)

(b) Except as provided by N.J.A.C. 10A:71-3.[48]**50,** such hearings shall be conducted at least 21 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(c)-(f) (No change.)

10A:71-[3.40 and 3.41] **3.42 and 3.43** (No change in text.)

10A:71-3.[42]**44** Board panel hearings; scheduling for county inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.[40]**42** or by a Board member(s) or a Board member and a senior hearing officer pursuant to N.J.A.C.

10A:71-3.[41]**43** shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) (No change.)

(c) Except as provided in N.J.A.C. 10A:71-3.[48]**50**, such hearing shall be conducted at least 14 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(d)-(h) (No change.)

10A:71-[3.43 and 3.44] **3.45 and 3.46** (No change in text.)

10A:71-3.[45]**47** Victim input

(a)-(h) (No change.)

(i) Except as provided in N.J.A.C. 10A:71-3.[48]**50,** the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification pursuant to (h) above of the intent to offer testimony.

(j)-(t) (No change.)

10A:71-3.[46]**48** Informational hearing

(a)-(d) (No change.)

(e) Except as provided in N.J.A.C. 10A:71-3.[48]**50,** the assigned hearing officer shall conduct the hearing within 30 days from the date the Chairperson or designee received the application submitted pursuant to (a) above.

(f)-(t) (No change.)

10A:71-[3.47 and 3.48] **3.49 and 3.50** (No change in text.)

10A:71-4.2 Appeals by inmates

(a)-(g) (No change.)

(h) The specific applications of Board schedules pursuant to N.J.A.C. 10A:71-3.3, 3.4, 3.[19]**21**, 3.[21]**23**, 3.[22]**24** or 7.16 shall be appealable to the Board or the appropriate Board panel, provided one of the following criteria is met:

1.-4. (No change.)

(i) (No change.)

10A:71-5.8 Parole rescission hearing; notice of decision

(a)-(c) (No change.)

(d) If the Board panel rescinds parole, the written decision shall include any future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 [and] **or** 3.[19]**21**.

10A:71-6.3 Certificate of parole

(a) (No change.)

(b) Such certificate of parole shall include all general and special conditions of parole imposed prior to release [and shall be signed by the Board member or members certifying parole release].

(c)-(g) (No change.)

10A:71-7.16 Board panel action; schedule of future parole eligibility dates upon revocation of parole

(a)-(e) (No change.)

(f) Except as provided herein, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve:

1. (No change.)

2. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime [or for possession of a controlled dangerous substance] shall serve less than 12 nor more than 16 months.

3. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime [, for sale or distribution of a controlled dangerous substance of for possession of controlled dangerous substance with intent to distribute] shall serve less than 16 nor more than 28 months.

4.-5. (No change.)

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s) **or 10 years, whichever is less**.

(g) Except as provided herein, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. (No change.)

ii. A term of 14 months for the commission of a third degree crime [or for possession of controlled dangerous substance];

iii. A term of 22 months for the commission of a second degree crime [, for the sale or distribution of controlled dangerous substance or for the possession of controlled dangerous substance with the intent to distribute];

iv.-v. (No change.)

2. (No change.)

(h) Except as provided herein, upon a two-member young adult Board panel determining that a young adult inmate shall serve a future **parole** eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:

1. (No change.)

2. Except as provided in (i) and (p) below, a term of [ten] **10** months for the commission of a third degree crime [or possession of controlled dangerous substance].

3. Except as provided in (i) and (p) below, a term of 16 months for the commission of a second degree crime [, for the sale or distribution of controlled dangerous substance or for the possession of controlled dangerous substance with the intent to distribute].

4.-5. (No change.)

(i) (No change.)

(j) Except as provided herein, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. (No change.)

2. Except as provided in (k) and (p) below, a term of eight months for the commission of a third degree crime[,] **or** an offense which constitutes a crime of the third degree if committed by an adult [or the offense of possession of controlled dangerous substance];

3. Except as provided in (k) and (p) below, a term of 12 months for the commission of a second degree crime[,] **or** an offense which constitutes a crime of the second degree if committed by an adult [, the offense of sale or distribution of controlled dangerous substance or the offense of possession of controlled dangerous substance with intent to distribute];

4.-5. (No change.)

(k) The future parole release term required pursuant to (j) above may be increased or decreased when in the opinion of the juvenile Board panel, pursuant to (n) or (o) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. (No change.)

2. Four months in the case of the commission of a third degree crime[,] **or** an offense which constitutes a crime of the third degree if committed by an adult [or the offense of possession of controlled dangerous substance];

3. Six months in the case of the commission of a second degree crime[,] **or** an offense which constitutes a crime of the second degree if committed by an adult [, the offense of sale or distribution of controlled dangerous substance, or the offense of possession of controlled dangerous substance with intent to distribute;

4.-5. (No change.)

(l)-(r) (No change.)

(s) [This section shall apply to all parolees whose parole is revoked by the Board or a Board panel after May 15, 1980, and shall apply to all inmates who have not yet begun to serve time on a parole violation. The adult Board panel may apply this section to any adult inmate currently serving a parole violation who requests such application.] **If an inmate's maximum sentence will expire prior to the future parole eligibility date that could be established pursuant to (b), (c), (d), (e), (f), (g), (h), (i) above or the future parole release date that could be established pursuant to (j) or (k) above, the appropriate Board panel may direct that such inmate serve his or her maximum sentence and not be eligible for parole consideration on the balance of the maximum sentence.**

(t) The prior provisions of [(d),] (f), (g) [(redesignated as (h) above) and] (h) [(redesignated as (i) above)], **(j) and (k)** shall apply to inmates who have violated their parole prior to [May 6, 1985] **the effective date of the amendments** and shall continue in effect for that purpose. The amendments to [(d),] (f), (g), (h) [(formerly (g) above) and], (i) [(formerly (h) above)], **(j) and (k)** shall apply to inmates who have violated their parole on or after [May 6, 1985] **the effective date of amendments. The amendment to (f)6 above shall be applicable to any inmate presently incarcerated for violation of parole.**

[(u) The amendments to (o) above shall apply to the cases of inmates in which a parole warrant has been executed on or after May 6, 1985.]

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Admission Requirements for Foreign and Alien Insurance Companies Appeals

Proposed Amendment: N.J.A.C. 11:1-10.7

Proposed By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:32-2; 52:14B-1 et seq.; 17:1C-6(e) and (i); 17:17-1 et seq.; 17:32-1 et seq.; and 17:32-15.

Proposal Number: PRN 1989-591.

Submit comments by December 6, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On June 19, 1989, the Department implemented new rules concerning admission requirements for foreign and alien property and casualty insurers, N.J.A.C. 11:1-10. Among the provisions of these rules were procedures concerning appeals where an applicant is denied authority to transact the business of insurance in New Jersey. The section as adopted needs to be clarified concerning the issue of post-Commissioner review since it states that there is a right to a "contested case" hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In fact, no such right to a hearing exists for initial authorization to transact the business of insurance in New Jersey (see N.J.S.A. 17:32-2d and N.J.S.A. 52:14B-11). Since there is no statutory authorization for a hearing under these circumstances, and since the Commissioner did not intend to provide one by rule (since his statutory authority requires that he exercise his total discretion to disallow authorization to "protect the interests of the people of this State"), the rule is proposed for amendment.

Social Impact

The proposed amendment will clarify the apparent uncertainty concerning the right to a hearing created by the rule as adopted. Since the Commissioner has always had and continues to have full discretionary authority in granting initial authorization, no social impact is anticipated toward applicants.

Economic Impact

Since the rule as proposed effectively gave no right to a hearing, since no such right was intended nor can one be given in derogation of statutory law, there is no discernible economic impact.

Regulatory Flexibility Analysis

The proposed new rules will likely not apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. By its very nature, this subchapter applies to foreign and alien corporations which, most probably, are not resident in New Jersey and almost certainly have 100 or more employees. However, since it is impossible to anticipate whether any particular entity may apply for admission, it is impossible to preclude the possibility that these rules do not apply to "small businesses" and, likewise, to estimate the number of "small businesses" to which the proposed new rules may apply.

The proposed amendments impose no recordkeeping or compliance requirements, nor do they impose initial or annual capital costs for compliance. No professional services will be required in their implementation. The proposed amendment applies to businesses of all sizes since its statutory basis does not allow for disparate treatment.

Full text of the proposed amendment follows (deletions indicated in brackets [thus]):

11:1-10.7 Review procedures; appeals

(a)-(e) (No change.)

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection.

1.-3. (No change.)

4. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant [and advise the applicant of its right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1].

(b)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Use of Credit Cards to Pay Insurance Premiums

Proposed New Rules: N.J.A.C. 11:1-24

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq., 17:22A-1 et seq., 17:33-2, 17B:30-1 et seq., and 17B:30-14d.

Proposal Number: PRN 1989-590.

Submit comments by December 6, 1989 to:
Verice M. Mason, Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Over the years, many consumers have shown a strong interest in using credit cards to purchase various goods and services. Credit card transactions offer the consumer a convenient method for making a purchase and provide a vehicle for financing the cost of the purchase over an extended period of time. As such, credit cards are frequently used to finance the purchase of major budget items for many consumers. The use of credit cards to pay insurance premiums may also make insurance available to persons who otherwise would be underinsured or uninsured. Over the years, the Department has received requests for clarification as to its position concerning the use of credit cards to facilitate the purchase of insurance. As a result, the status of credit cards as an acceptable means of paying and financing insurance premiums has become an issue for consideration by the Department. The purpose of the proposed new rules is to address this issue.

The Department has previously acknowledged credit cards in facilitating the purchase of life and health insurance (see, for example, N.J.A.C. 11:4-16.9). With respect to utilizing credit cards as a means of financing the premium, the Department recognizes that, due to the interest charges associated with these cards, the cost of spreading insurance premium payments over an extended period of time can be significant. Consumers, accordingly, should be aware of and carefully consider such costs in determining whether to finance insurance premium charges through a credit card transaction. Consumers should also consider other budgeting or payment alternatives which may be available, such as the installment payment option provided by many insurers. This payment option is generally accompanied by a small set installment fee applicable to each payment and is generally less expensive than the use of credit cards.

Nonetheless, the Department realizes that in those instances where a suitable payment plan is not offered by the insurer, credit cards can be a means of achieving necessary financing. It also appears that credit card transactions may provide some consumers with a viable alternative to premium finance companies. The Department has been advised that the interest rates charged by such companies are, generally, substantially in excess of those applicable to credit card transactions.

While the Department recognizes the potential benefits of using credit cards to pay insurance premiums, the Department also believes that it is necessary to establish standards and requirements applicable to their use to ensure that consumers are given fair access to this method of payment and to otherwise prevent possible abuses. Indeed, many other states have enacted statutes or promulgated agency rules, or have by other means addressed the use of credit cards to pay for insurance coverages. Accordingly, the proposed new rules regulate the acceptance of credit cards by insurers, insurance producers and limited insurance representatives to pay insurance premiums for all lines of insurance, and establish standards concerning the use of credit cards consistent with and pursuant to the fair trade practice provisions of the insurance laws of New Jersey.

Social Impact

Credit cards provide consumers with a convenient method of paying insurance premiums. Where circumstances warrant, credit cards also can be used to finance the cost of insurance over an extended period of time.

The standards in the proposed new rules recognize the use of credit cards in the insurance industry and will protect consumers against unfair discrimination and other unfair trade practices in connection with the offering of the credit card payment option. Also, insurers, insurance producers, and limited insurance representatives, as well as consumers, will benefit by being fully apprised of the standards applicable to the use of credit cards to pay insurance premiums.

The enforcement activities of the Department of Insurance will be facilitated by the establishment of specific requirements for credit card transactions.

Economic Impact

In many cases, credit cards can provide consumers with a mechanism of paying for insurance coverage that permits the consumer to spread the cost over a period of time. Insureds, of course, must weigh the benefits and costs of financing insurance premiums through credit card installment payments relative to any other budget or payment methods which may be available, such as a suitable installment payment plan provided by the insurer. Such a plan is generally less expensive.

Where credit cards are used as an alternative to insurance premium financing, however, interest charges to consumers should be reduced. Interest rates at premium finance companies may run as high as 30 percent (see N.J.S.A. 2C:21-19). In comparison, interest rates at banks for credit cards average less than 20 percent. For example, if an $800.00 premium is financed through an insurance premium finance agreement that provides for repayment of the loan in eight equal monthly installments at an annual interest rate of 30 percent, the total finance charge will amount to more than $70.00. In contrast, an $800.00 premium financed in a similar fashion through a credit card company at an annual interest rate of 17 percent will generate a finance charge of $50.00. The Department believes, however, that the use of company installment plans is generally more economical than the use of either credit cards or premium financing.

The actual economic impact of the proposed new rules will be largely dependent on the extent to which insurers make credit card payments available to consumers. It must be recognized that insurance producers, limited insurance representatives and insurers which provide clients with the credit card payment option will incur the cost of credit card company service fees. On the other hand, insurance producers, limited insurance representatives and insurers which accept credit cards may receive payment for premiums more expeditiously. Also, the credit card companies will be responsible for any collection problems. These two features may serve to reduce certain administrative costs for insurance producers, limited insurance representatives and insurers, and thereby offset the service fee that they will incur in providing the credit card option.

To the extent that insurers save administrative costs (for example, billing, postage, processing, etc.), these savings may be passed on to insurers through reduced rates. However, to the extent that insurers incur extra costs, such costs may be passed on to the consumer where actuarial justification exists and Departmental approval is first secured. In this regard, several insurers have indicated that the use of credit cards will enable them to lower premium rates for users.

The proposed new rules may provide insurers, insurance producers, and limited insurance representatives with new marketing opportunities by authorizing and clarifying the condition for the use of credit cards to facilitate the marketing and purchase of insurance.

There will be no economic impact on the Department of Insurance.

Regulatory Flexibility Analysis

The proposed new rules will apply to insurers, insurance producers and limited insurance representatives, some of whom may be "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Since the rules do not require conformity therewith unless an insurer, insurance producer or limited insurance representative chooses to use credit cards as a means of facilitating the payment of premiums, they do not directly impose any compliance requirements. However, if an insurer desires to utilize credit cards, then all of its insurance producers and limited insurance representatives will be required to offer this option, since the proposed rules require that the payment by credit card option be made available to all existing and prospective insureds who have purchased or are offered the same insured's product.

The use of professional services will not be required to implement the proposed new rules.

Initial and annual capital costs will include the costs associated with the start-up and maintenance of a credit card payment system, including concomitant service fees.

The proposed new rules do not attempt to minimize any adverse economic impact on small businesses since costs are controlled by private credit card companies and the requirement that an insurer offer (through its insurance producers and limited insurance representatives or directly) the credit card option, if at all, on a non-discriminatory basis, is a requirement of law (see N.J.S.A. 17:29B-1 et seq. and 17B:30-1 et seq.). Thus, if an insurer opts to use credit cards, then it and its insurance producers and limited insurance representatives must make their use available to all insureds or prospective insureds who have purchased or are offered the same product, with attendant costs.

Full text of the proposed new rules follows:

SUBCHAPTER 24. USE OF CREDIT CARDS TO PAY INSURANCE PREMIUMS

11:1-24.1 Purpose and scope

(a) The purpose of this subchapter is to regulate the use of credit cards by insurers, insurance producers and limited insurance representatives and to provide standards concerning the use of credit cards to pay for insurance premiums when an insurer, insurance producer or limited insurance representative has entered into a contract with a credit card company to accept credit cards to facilitate the payment of insurance premiums. This subchapter implements the provisions of N.J.S.A. 17:29B-1 et seq. and 17B:30-1 et seq. to prevent unfair discrimination and unfair and deceptive practices in the use of credit cards to pay insurance premiums.

(b) This subchapter applies to any insurer, insurance producer or limited insurance representative who enters into a contract with a credit card company to accept credit cards as a method of payment of an insurance premium.

(c) This subchapter applies to all kinds of insurance except credit life and credit health insurance.

(d) The provisions of this subchapter are in addition to any other applicable requirements of Federal and State law and apply to the extent that they are not inconsistent therewith.

11:1-24.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Credit card" means those cards issued by or through banks, other financial entities or nonfinancial entities, that enable holders of the card to purchase goods or services on credit from entities which agree with the issuer to honor that card.

"Credit card company" means such entities which enter into contractual arrangements with vendors, including providers of services, whereby the vendor agrees to accept as a method for payment of

goods purchased or services rendered a credit card issued by the entity to the purchaser of such goods or services.

"Insurance producer" means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as these terms are defined in N.J.S.A. 17:22A-2.

"Insurer" means any person, corporation, association, partnership, company, fraternal benefit society, eligible surplus lines insurer, Lloyd's insurer, reciprocal exchange, interinsurer risk retention or purchasing group and any other person or legal entity engaged in the business of insurance pursuant to Titles 17 or 17B of the New Jersey statutes, or any corporation or organization authorized pursuant to Part 9 of Subtitle 3 of Title 17 of the New Jersey Statutes.

"Limited insurance representative" is defined at N.J.S.A. 17:22A-2m.

"Negotiate" means the act of conferring with a prospective purchaser of a contract of insurance concerning any of the substantive benefits, terms of, or the premium to be charged for, the contract.

"Solicit" or "solicitation" means any activity which is designed to attract, invite, convince or persuade someone to purchase a contract of insurance that is being offered for sale by or through the person making the solicitation.

11:1-24.3 Use of credit cards permissive; availability

(a) The use of credit cards by an insurer, insurance producer or limited insurance representative shall be optional and shall be permitted as long as the insurance laws of this State and other applicable provisions of law are not violated.

(b) Any insurer, insurance producer or limited insurance representative who agrees to allow the use of credit cards in the payment of insurance premiums shall make that service available to all existing and prospective insureds who are invited to purchase the plan or policy being offered, and shall not limit the use of credit cards to only certain entities or persons among those being offered the same plan or policy.

(c) Insurers, insurance producers and limited insurance representatives who offer the use of credit cards for the payment of premiums as an option for an insurance plan or policy shall make this option available for the payment of all subsequent installments of the premium; provided, however, that an insurer may discontinue the use of payment by credit card as a means of the payment of premiums generally if the insurer first notifies the Department of Insurance and secures its approval of the discontinuation. No discontinuation shall be approved where an insurer does not offer the credit card holder the option to make direct monthly payment of premiums to the insurer upon discontinuation of the payment by credit card option.

(d) An insurer shall not be permitted to require payment of insurance premiums by credit card only, except that an insurer offering a life or health insurance product, or an annuity, may, for good cause, secure from the Commissioner a waiver of this requirement.

11:1-24.4 Ratemaking

No premium shall differentiate in rates on the basis of payment by credit card or payment by means other than credit card unless actuarial justification exists and such justification is first made available to and approved by the Commissioner.

11:1-24.5 Cancellability of policy

(a) The insurance policy which is the subject of a credit card transaction shall not be cancellable or non-renewed by any person other than the named insured, the policyholder (including the owner of the policy where the policyholder is not the named insured) or the insurer, in accordance with the provisions of Title 17 and 17B of the New Jersey Statutes Annotated, any implementing administrative rules and the insurance contract.

(b) Insurers who agree to accept the payment of premiums by credit card shall establish procedures concerning the cancellation of credit card arrangements and the cancellation or nonrenewal of insurance. These procedures shall be made available for approval and review upon request of the Department. Such procedures shall, at a minimum, preclude the termination of insurance because of the violation of credit card rules, including the failure by an insured to pay credit card charges. Insureds electing to use a payment by credit card option shall be advised by the insurer of these procedures, in writing, at the time of initial application, renewal or change in rules.

11:1-24.6 Service fee disallowed

No insurer, insurance producer or limited insurance representative may impose a service fee or charge on an insured or prospective insured who elects to use a credit card to pay an insurance premium.

11:1-24.7 Refund of premium

A refund of an unearned premium which has been paid by credit card shall, at the option of the credit card holder, be made by the insurer, insurance producer or limited insurance representative directly to the credit card holder in conformity with the provisions of Titles 17 and 17B of the New Jersey Statutes Annotated (for example, 17:29C-4.1, 17B:25-2.1 and 17B:26-3.1), or as a credit to his or her credit card account. An insurer shall notify an insured directly in cases where an insured is due a refund of premium and shall provide to the insured notice of the aforesaid options.

11:1-24.8 Coverage; collection of premiums

(a) When a premium is paid by credit card, coverage shall be effective on the date that the election of payment by credit card is made by the insured, unless otherwise provided in writing by the insurance contract.

(b) Premium payments other than the initial payment shall be considered collected by and paid to the insurer, and coverage renewed or maintained, when the credit card company is billed by the insurer.

11:1-24.9 Prohibited and permissible activities concerning use of credit card company

(a) All solicitations concerning insurance shall be made by an insurer, an insurance producer or a limited insurance representative.

(b) An insurer, insurance producer or limited insurance representative allowing payment by means of a credit card shall not solicit in such a way as to imply that the credit card company is actually doing the solicitation. Prohibited practices by an insurer, insurance producer or limited insurance representative shall include, but are not limited to, the following:

1. The use of the credit card account number on the address label of the person being solicited; and

2. The use of the colors or emblem of a credit card company.

(c) Notwithstanding (b) above, an insurer, insurance producer, or limited insurance representative may use the mailings of a credit card company (for example, billings) to distribute its own solicitations provided that the relationship between the insurer, insurance producer or limited insurance representative and the credit card company is fully and clearly explained. An insurer, insurance producer and limited insurance representative shall be permitted to include in its solicitation distributed by a credit card company information concerning the option of paying for insurance through a credit card account.

(d) An insurer, insurance producer or limited insurance representative shall not employ or avail itself of the services or use of a person or firm engaged in the credit card business to negotiate any contract of insurance on a life or risk in New Jersey.

11:1-24.10 Notice of premium changes

When, for any reason, an insurer effects a premium rate increase, the insurer shall, in writing, so notify all insureds affected by the increase prior to the increased amount being added to the credit card account. Notice of an increase given to the credit card company shall not be a substitute for notice to the insured as required by this section.

11:1-24.11 Disclosure of optional methods of payment

An insurer, insurance producer or limited insurance representative allowing payment of insurance premiums by credit cards shall fully disclose to the insured or prospective insured the availability and terms of all optional methods of payment and the differences, including cost, between these methods and the payment by credit card option.

11:1-24.12 Penalties

Failure to abide by the provisions of this subchapter shall subject the violator to the penalties prescribed by law.

(a)

DIVISION OF PROPERTY/LIABILITY

Personal Lines Insurance: Policy Form Standards

Proposed New Rule: N.J.A.C. 11:2-27

Authorized By: Kenneth D. Merin, Commissioner, New Jersey Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29A-7; N.J.S.A. 17:36-5.24.

Proposal Number: PRN 1989-586.

Submit comments by December 6, 1989 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These proposed new rules set forth standards for disapproval of personal lines insurance policy forms. Pursuant to N.J.S.A. 17:29A-1 et seq. and N.J.S.A. 17:36-5.15, insurers submit personal lines insurance policy forms for prior approval by the Commissioner. These policy forms are reviewed and approved if they are found not to be unfair, inequitable, misleading or contrary to law, or which produce rates that are excessive, inadequate or unfairly discriminatory. Personal lines policy forms are also considered "consumer contracts" in accordance with N.J.S.A. 56:12-1c, the Plain Language Act, and may be reviewed for compliance with the standards of that law.

Most of the standards set forth in these proposed rules have been applied to disapprove personal lines insurance policy forms for the last several years on a case-by-case basis. It is appropriate to adopt them as comprehensive rules for the information of insurers which file the forms. The standards address policy language that limits insurer liability or excludes certain occurrences from coverage. Some of the prohibited limits or exclusions significantly alter coverage traditionally afforded for purchasers of personal lines liability insurance and thus are contrary to the reasonable expectations of the insured when purchasing the policy. These limits or exclusions when included in a policy of personal liability insurance are inconsistent with the function of the insurance mechanism, which is to spread the risk of loss.

Proposed N.J.A.C. 11:2-27.1 sets forth the purpose and scope of the rules.

Proposed N.J.A.C. 11:2-27.2 defines certain words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:2-27.3 prohibits the use of claims made policy forms for personal lines insurance coverages.

Proposed N.J.A.C. 11:2-27.4 prohibits the use of provisions that include defense costs and prejudgment interest within policy limits.

Proposed N.J.A.C. 11:2-27.5 prohibits the use of certain exclusions from coverage in personal lines liability insurance policies.

Proposal N.J.A.C. 11:2-27.6 directs insurers with policy forms inconsistent with the standards to amend those forms and refile them within 180 days.

Social Impact

Since these rules primarily articulate standards currently being applied for the approval of personal lines insurance policy form filings, the primary impact is to notify insurers which file the forms what policy language will not be approved. The standards themselves set forth policy form language consistent with the reasonable expectation of coverage for insureds who purchase personal lines insurance. These standards promote the function of the insurance mechanism by helping to ensure that it properly spreads the risk of loss.

Economic Impact

The proposed new rules will have a negligible economic impact. Initially, some additional administrative work may be required by insurers to refile policy forms and the Department to review those forms that are currently in use which may be inconsistent with one or more of the standards set forth in these proposed rules. The Department believes, however, that very few personal lines policy forms currently in use will need to be refiled, since the standards set forth in these proposed rules have been in effect for several years.

Conversely, clear standards about what form language is not acceptable to the Department will in the future reduce the work of insurers and the Department in submitting and disapproving policy forms that do not meet these standards.

Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" consist of insurance companies authorized to write personal lines insurance in New Jersey.

Since the purpose of these rules is to establish minimum standards for personal lines policy forms used by all insurers, it would be inconsistent to establish different standards based upon company size. It should be noted that personal lines insurance policies are defined by law as consumer contracts, and that the insurance product is intangible and based upon the words in those contracts.

All insurers regardless of size file their personal lines policy forms for approval by the Commissioner. Most insurers either have in-house staff to develop their own policy forms, or use standard policy forms developed by a rating organization of which they are a member or subscriber. Thus it would appear that there are no additional costs of professional services required to comply. Furthermore, it should be noted that by setting forth the standards in administrative rules, insurers that qualify as small businesses will avoid the cost of submitting and having disapproved policy forms inconsistent with the standards.

The rules provide a six-month period after adoption during which any policy forms that are inconsistent with the standards must be amended and refiled. This should be more than sufficient time to allow all insurers, regardless of size, to comply with the requirements of these proposed rules.

Full text of the proposal follows:

SUBCHAPTER 27. PERSONAL LINES INSURANCE: POLICY FORM STANDARDS

11:2-27.1 Purpose and scope

(a) The rules in this subchapter set standards for the disapproval of personal lines insurance policy forms submitted for approval by the Commissioner pursuant to N.J.S.A. 17:29A-1 et seq. and 17:36-5.5. These standards prohibit policy forms which are unfair, inequitable, misleading or contrary to law, or which produce rates that are excessive, inadequate or unfairly discriminatory.

(b) Nothing in these rules shall authorize the approval or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by any other law or rule.

(c) These rules apply to all insurers which file personal lines policy forms for the prior approval of the Commissioner.

11:2-27.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Claims made policy" means an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay (including injury or damage occurring prior to the effective date of the policy) arising out of incidents, acts or omissions, as long as the claim is first made during the policy period or any extended reporting period.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Cost of legal defense" or "defense costs" means allocated attorney and all other litigation expenses that can be separately identified as arising from the defense of a specific claim.

"Day" means calendar day.

"Department" means the New Jersey Department of Insurance.

"Extended reporting period" means that period of time specified in a policy in which claims first made after termination of coverage under the policy for injury or damage that occurs during the policy term, or that occurs on or after a retroactive date if any, will be considered to be made during the policy term.

"Insurer" means any person, corporation, association, partnership or company licensed under the laws of this State to transact the

business of insurance and rating organizations that file policy forms on behalf of their members and subscribers.

"Liability insurance policy" means any insurance policy that provides coverage for legal liability, even if it contains other types of coverage.

"Occurrence policy" means an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay out of incidents, acts or omissions that occurred during the policy period, for which a claim may be made during or subsequent to the policy period.

"Personal lines insurance" means insurance issued for personal, family or household purposes, including:

1. Policies used solely to provide homeowners insurance, dwelling fire insurance on one to four family units, or individual fire insurance on dwelling contents;

2. Policies principally used to provide primary insurance on private passenger automobiles which are individually owned and used for personal or family needs; and

3. Policies of personal inland marine, personal theft, residence glass, personal liability insurance and personal excess.

Personal lines insurance does not include insurance used to cover business, professional or other commercial risks, such as business owners, commercial multi-peril policies and professional liability insurance.

"Policy" or "insurance policy" means the contract between the insurer and the insured including all endorsements.

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and wastes.

"Social host" means a person who, by express or implied invitation, invites another person onto an unlicensed premises for purposes of hospitality and who is not the holder of a liquor license for the premises and is not required to hold a liquor license for the premises under Title 33 of the Revised Statutes, and who provides alcoholic beverages to another person.

"Wastes" includes materials to be recycled.

11:2-27.3 Claims made policy forms

No personal lines insurance policy shall be issued or renewed on a claims made policy form.

11:2-27.4 Policy limits provisions

(a) No personal lines liability insurance policy shall include the cost of defense of a claim within the limits of liability. All personal lines liability insurance policies shall provide costs of defense as a supplemental coverage.

(b) All personal lines liability insurance policies shall cover prejudgment interest as a supplemental coverage.

1. Personal lines liability insurance policies may include the amount of the interest limited to those amounts that are within the policy limits of liability.

2. No personal lines liability insurance policy shall be issued or renewed in this State that does not provide this supplemental coverage.

11:2-27.5 Exclusions from coverage

(a) No personal lines insurance policy shall be issued or renewed on a form which contains provisions excluding coverage as set forth in this section.

(b) In the event that any standard policy form includes exclusions or restrictions of coverage as set forth in this section, the form shall also include provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

1. No personal lines liability policy shall contain a provision that excludes coverage for the discharge of pollutants resulting from sudden and accidental events.

2. No personal lines liability insurance policy shall contain a provision that excludes coverage for bodily injury or property damage resulting from the serving or selling of alcoholic beverage by any insured or insured's indemnitee acting in the capacity of a social host.

3. No personal lines liability insurance policy shall contain a provision that excludes from coverage bodily injury, property damage or medical expense arising out of or resulting from the actual, alleged, threatened, attempted or proposed sexual molestation or abuse of any person by any insured, employee of any insured, or acting on behalf of any insured. Nothing in this section shall prohibit a policy from containing a provision by which the insurer may seek recovery by subrogation against an insured, employee of any insured, or any other person actually or apparently acting on behalf of any insured.

4. No personal lines liability insurance policy shall contain a provision that excludes from coverage liability for the transmission of or the exposure to a communicable disease by the insured to any other person.

5. Since insurance coverage for criminal acts is prohibited by public policy as set forth in the common law, no personal lines liability insurance policy shall contain a criminal acts exclusion so as to appear to create a distinction between policies that do not cover criminal acts and policies that do cover criminal acts.

11:2-27.6 Refiling policy forms

(a) Insurers with previously approved policy forms containing provisions inconsistent with the standards set forth in this subchapter shall amend those forms and refile them for prior approval by the Commissioner within 180 days of the effective date of this subchapter.

(b) Policy forms refiled as set forth in (a) above shall comply with all standards set forth in this subchapter.

(c) Policy forms refiled shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refiling has been done within the time provided by (a) above.

(a)

DIVISION OF PROPERTY/LIABILITY

Notice of Comment Period Extension
Commercial Lines Insurance: Policy Form Standards
Proposed New Rules: N.J.A.C. 11:13-7

Take notice that the Department of Insurance has extended the deadline for receipt of public comments on its proposed new rules, N.J.A.C. 11:13-7, Commercial Lines Insurance: Policy Form Standards, published in the October 2, 1989 New Jersey Register at 21 N.J.R. 3057(a) to November 30, 1989.

Submit comments by November 30, 1989 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

(b)

DIVISION OF ADMINISTRATION

Rate Filing Review Procedures: Voluntary Market Private Passenger Automobile Insurance
Reproposed New Rules: N.J.A.C. 11:3-18

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); N.J.S.A. 17:29A-14; N.J.S.A. 17:29A-36.2; N.J.S.A. 17:29A-44e; and P.L. 1988, c.119, section 45.

Proposal Number: PRN 1989-587.

Submit comments by December 6, 1989 to:

Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

This reproposed subchapter sets forth the processes for the review of rate filings required by N.J.A.C. 11:3-16, which was reproposed August 7, 1989 (see 21 N.J.R. 2182(a)) and is pending adoption.

P.L. 1988, c.119 and P.L. 1988, c.156 made several changes in automobile insurance rate filing requirements. First, the Commissioner was directed to promulgate uniform rules for rate filings and ratemaking. Secondly, insurers are now required to make annual filings of rate information with the Department. Thirdly, insurers may make annual filings for rate adjustments within a flex rating band. Finally, the Commissioner is authorized to designate a person from the Department to conduct hearings on rate filings, which previously were required to be heard by the Commissioner himself or by the Office of Administrative Law.

These reproposed rules set forth procedures for the review of annual informational and flex rate filings required to be made pursuant to amendments to the automobile insurance laws enacted in 1988. Together with the rate filing requirements set forth in N.J.A.C. 11:3-16 (pending adoption), these rules are also intended to remedy problems that existed in the processing of automobile insurance rate change filings made pursuant to N.J.S.A. 17:29A-14. The rate filing requirements of N.J.A.C. 11:3-16 provide that the Department and the Division of Rate Counsel of the Department of the Public Advocate, which may participate in the ratemaking process, will receive with the filings sufficient information to evaluate it. In the past, substantial time was required after the initial filing to obtain statistical and actuarial information from the filer. These reproposed rules serve as a compliment to N.J.A.C. 11:3-16 by establishing processing steps and time requirements within which those steps are to be taken.

This subchapter describes the internal departmental review procedures up to and including the time when a determination is made that the matter constitutes a contested case, after which the processes are governed by the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and specific provisions for insurance rate hearings provided in N.J.S.A. 17:29A-14. Complimentary rules that amend N.J.A.C. 1:11 (Special Rules for Insurance Filing Hearings) and set forth hearing procedures in accordance with N.J.S.A. 17:29A-14 will be considered for proposal by the Office of Adminstrative Law in the near future.

Similar rules were previously proposed on April 3, 1989 at 21 N.J.R. 839(a). As a result of the several comments received, and the Department's own internal review, the Department has developed these reproposed rules that incorporate significant changes. The reproposed rules set forth below were implemented by Order of the Commissioner (Order #A89-171 issued May 24, 1989) so as to provide insurance rate filers with instructions and information concerning the review of their filings required to be submitted July 1, 1988 and thereafter. The procedures set forth in that Order have operated satisfactorily, and the Department now reproposes these rules. In doing so it is appropriate that the Department address the written comments received on the April 3 proposal.

Eleven comments were received from various insurance companies and a rating organization which file voluntary market private passenger automobile insurance rates. Rule citations in the comments and responses below refer to the provisions of the April 3 proposal.

COMMENT: One commenter questioned the definition of "filer" in 11:3-16.2, interpreting it not to include companies which have given rate filing authority to a rating organization. The commenter stated that its company does not file its own rates.

RESPONSE: 1988 amendments to the automobile insurance laws require all insurers to make informational filings, and further require all insurers to file their "own expenses" (see N.J.S.A. 17:29A-6.1). As a result of this change, Insurance Services Office, Inc., the largest rating organization, has begun filing only "loss costs", the pure premium portion of the rate based solely on losses and loss adjustment expenses. It no longer files "final" rates that include each insurer's expenses and profit provisions. The definition of "filer" includes either a rating organization making a partial "loss cost" filing, or the insurer itself when making an informational or rate change filing.

COMMENT: Several commenters objected to the requirement that deficiencies be remedied within 10 days of notice that a filing is incomplete. They suggested longer time frames, from 15 days to 60 days.

RESPONSE: The reproposed rule provides 30 days in which to cure an incomplete filing.

COMMENT: Several commenters objected to certain provisions of proposed N.J.A.C. 11:3-18.5, which provides that if a flex rate filing is found to be incomplete, and if the deficiency is not cured within the time provided, the Commissioner may enter an Order directing the filer to cease using the flex rates and file a plan to refund or adjust the rates of any insured charged the flex rates. Commenters stated there was no statutory authority to order a rollback. One commenter stated that this rule would render flex rating meaningless in that insurers would not implement a flex rate until it had been "approved" because of the threat of a rollback, contrary to the intent and language of the flex rating statute. One commenter stated it would be arbitrary and capricious to disapprove a rate filing and order a refund where the information that was not filed had no relationship to the calculation of whether the rate changes are within the flex band. One commenter suggested that the Department simply fine the filer for making an incomplete filing; another suggested more generally the use of other penalties.

RESPONSE: Many of the commenters seem to misunderstand the nature of the new flex rate provisions for automobile insurance. The statute provides for the implementation of rates within certain limits but without prior approval. The flex rate statute did not change the criteria that auto insurance rates not be excessive, inadequate or unfairly discriminatory; it simply allowed rates that met that criteria to be implemented without prior approval if within certain limits. A flex rate filing should demonstrate that the increased rates are not excessive by including sufficient data and calculations for the Department to make its review. If that data is not included, and the filer refuses to supply it when notified, the Commissioner must have the authority to order the insurer to cease using those rates immediately.

The flex rate statute conditions authority to implement flex rates on the insurer filing information "in a manner and form approved by the Commissioner". N.J.S.A. 17:29A-44e. If that condition is not met, that is, the supporting information that shows the increase not excessive is not filed, then the filer may not implement or continue to use the higher rates. It has, furthermore, improperly charged them since the date of implementation. This rule provides that the remedy of a return to rates previously approved may be ordered when the insurer has implemented an illegal rate increase.

At the same time, however, it provides important procedural safeguards for the filer. The filer is entitled to specific notice of any deficiency and 30 days in which to cure it. The notice to the filer sets forth the importance of taking prompt action to cure the deficiency by advising the filer of the potential for a rollback order. An insurer that believes its filing has been improperly determined to be incomplete may request a hearing on that issue.

Any rule that provided less would leave no effective remedy if an insurer improperly implemented rates within the flex band, but which are excessive in view of its claim and expense experience. Without this provision, such an insurer could simply implement a flex band increase without any supporting information. Authority simply to fine the insurer for submitting an incomplete filing is a totally insufficient remedy for the many insureds who would have been, and would continue to be, charged excessive rates. The Department therefore believes that the statutory authority to use this remedy is implied in the language of N.J.S.A. 17:29A-44e and other statutes that set forth the general powers of the Commissioner.

It should be noted that the severe remedy of ordering a retroactive rollback to the insurers previously approved rates is not a mandatory penalty that must be applied in every case regardless of the circumstances. The rule does, nevertheless, provide the method for doing so when warranted.

This rule is intended to require insurers to evaluate carefully the necessity for a flex rate increase based on their loss and expense experience prior to implementing it. If their data does not support such an increase, they should not file and implement it. If the data does support it, they may file that data and implement the increase without concern that the Commissioner will order a rollback. That is what N.J.S.A. 17:29A-44 anticipates and provides.

COMMENT: One commenter stated that the standard of submission and review for a flex filing should be identical to the standard required for an annual informational filing.

RESPONSE: The review of annual informational filings and flex rate filings are similar in the reproposed rule. The filing is made and deemed complete unless the Department advises the filer within 60 days that the filing is incomplete. The differences have to do with the appropriate remedy or penalty if the filing is found to be incomplete and the filer fails to cure the deficiency. Failure to cure a deficiency in an annual informational filing subjects the filer to monetary penalties. Failure to cure an incomplete flex rate filing that has been implemented by a rate

increase requires further proceedings to return to the previously approved rate level, and provides due process to the filer, as stated in the response to the preceding comment.

COMMENT: A commenter expressed "due process concerns" with regard to the procedures for reviewing filings requiring prior approval of the Commissioner. The commenter stated that the rule ignored due process by requiring the filer to request a hearing before knowing whether the rate request will be approved or denied, and allowing the Commissioner discretion in deciding what is a contested case.

RESPONSE: Rules regarding the review of prior approval filings have been revised in the reproposal. The Department believes that the reproposed rules comply with the requirements of due process as well as the technical provisions of the Administrative Procedure Act and N.J.S.A. 17:29A-14 regarding hearings on insurance rate matters. The commenter implies that it would request a decision on the filing prior to a hearing. The Department believes that a rule that provides for a decision prior to a hearing would in itself raise serious due process concerns, and further be inconsistent with the specific provisions of N.J.S.A. 17:29A-14c. The reproposed rule provides a time limit of 60 days after receipt of a filing by the Department within which either the Public Advocate or the filer may request a hearing, which is their right under N.J.S.A. 17:29A-14. The filer's substantive right to a hearing prior to disapproval of a rate filing is not affected by this rule, which addresses the chronology of proceedings.

Likewise, the determination of the Commissioner that a matter is a "contested case" is a procedural step; the rule does not purport to grant to the Commissioner discretion to refuse to hold a hearing contrary to N.J.S.A. 17:29A-14, the Administrative Procedure Act, or the Constitution. "Contested case" is defined in the Administrative Procedure Act and triggers further formal procedural steps set forth in N.J.S.A. 52:14B-9 and 52:14B-10. It also is the "decision that a hearing is to be held" as set forth in N.J.S.A. 17:29A-14c(1), which also triggers formal proceedings and sets specific time frames within which they are to be accomplished. The Department believes that the reproposed rules provide the filer, the Public Advocate and the Department adequate time to review and resolve by consent many rate filings that require prior approval, without undertaking the formal hearing processes required after a determination is made that the matter constitutes a "contested case". These procedural steps in no way prejudice any party's right to a formal, contested case hearing when needed or requested.

COMMENT: One commenter expressed concern about the amount of rate information required to be supplied to the Department and Public Advocate in prior approval filing proceedings, and "to what extent such requests are subject to protective orders generally under New Jersey Trade Secrets law."

RESPONSE: Additional discovery beyond the information required to be submitted by N.J.A.C. 11:3-16 is severely limited under the reproposed rules. A primary purpose of the rate filing requirements rule and these reproposed rules is to obtain necessary information at the time of the filing and thereby promote prompt resolution. As indicated in the comments to N.J.A.C. 11:3-16, reproposed August 7 at 21 N.J.R. 2182(a), the Department would consider providing appropriate provisions to protect Trade Secrets if advised what information was considered so by filers (see 21 N.J.R. 2183-2184).

COMMENT: One commenter expressed due process concerns about the Commissioner's authority to determine that a matter is a "contested case" in the context of a filer's request for a hearing on whether its flex rate filing is incomplete.

RESPONSE: As stated above, the determination that a matter is a contested case is a procedural step that triggers a formal hearing. These rules do not abolish substantive rights.

The reproposed rules provide that a filer who has been notified of an incomplete flex rate filing may request a hearing on the issue of completeness. The request for the hearing is to be made in writing and contain facts or arguments that support the filer's position. The reproposed rules further provide that, within 10 days of the receipt of a request for a hearing, the Commissioner shall determine whether a hearing is required. The procedural step of determining whether a hearing is required avoids the necessity of undertaking formal processes when the filer's request for a hearing contains sufficient information to determine that the filing is complete as submitted or as supplemented.

COMMENT: A commenter suggested a proceeding by which the Department, after review of a filing and the Public Advocate's report, issue a report describing disagreements with the filing that may result in its disapproval. Thereafter, either the filer or the Public Advocate would make its request for a hearing.

RESPONSE: The Department considered this kind of procedure prior to reproposing these rules, but determined that it would likely delay resolution of filings beyond acceptable limits. As the commenter noted, the filer has a right to a hearing on its filing prior to disapproval. In the event an appropriate resolution could not be obtained among the parties the Commissioner may determine that a hearing is required on his own authority without any request pursuant to N.J.S.A. 17:29A-14c. If the filer is not confident that this will occur, it simply need advise when making the filing: "If the Commissioner determines that the rates set forth in this filing will not be approved, or the filer's consent is not achieved on all issues, the undersigned hereby requests that a hearing be held prior to any disapproval."

COMMENT: A commenter suggested that N.J.A.C. 11:3-18.6(b)-(h) be modified by adding "by the Department" after the words "after receipt of a filing" to confirm it is receipt by the Department that triggers the time frames, rather than receipt by someone else.

RESPONSE: This additional language appears unnecessary in the reproposed rules. N.J.A.C. 11:3-18.3(a), 18.4(a) and 18.5(a) all provide that the Department's review begins upon receipt of the filing. Since N.J.A.C. 11:3-18.5(a) further provides that a copy of a prior approval filing shall be served on the Public Advocate simultaneously, all parties (the filer, the Department and the Public Advocate) will know of the date of receipt.

COMMENT: A commenter requested an opportunity for input by the filer concerning a petition by the Public Advocate for additional information as provided in N.J.A.C. 11:3-18.6(e). It suggested language that so provided, and further suggested that the rules provide an opportunity for settlement discussions between the filer and the Public Advocate concerning additional information requested.

RESPONSE: Provisions concerning requests for information have been revised in the reproposal. As revised, the filer is provided an opportunity to respond to any petition by the Public Advocate for supplementary information. There is no specific provision for settlement discussions on this issue; the Department believes that specifically providing a time to resolve such matters would build further delays into the process. Nevertheless, the parties to such disputes always have the authority to resolve such matters between themselves.

COMMENT: One commenter requested that a provision be inserted providing that rates be "deemed" approved within a specified time if the filing is complete and the Department does not otherwise respond.

RESPONSE: This comment appears to relate to rate filings requiring the prior approval of the Commissioner, since a flex rate filing may be implemented when a complete filing is made. The Department interprets N.J.S.A. 17:29A-14 to require the affirmative approval of the Commissioner; it does not provide for a filing to be "deemed" approved by inaction. The Department contemplates that the procedures set forth in the reproposed rules will provide for expeditious processing of these filings, and the prompt disposition the commenter is seeking. If the filing is complete and no issues require a hearing, an order approving the filing will be issued as a matter of course.

COMMENT: A rating organization commented that N.J.A.C. 11:3-18.3(b)1 exceeds the statutory authority delegated to the Department in that it appears to prohibit rating organizations from making filings on behalf of their members or subscribers.

RESPONSE: The rule is intended to require insurers to make an individual filing. It does not prohibit filing from being made by an authorized rate filing agent that has all required data available.

COMMENT: A rating organization commented that the requirements contained in N.J.A.C. 11:3-18.3(b)2i-iv are unduly burdensome and referred to its comments on proposed N.J.A.C. 11:3-16.

RESPONSE: These rules of procedure remain subject to the substantive rate filing requirements rules in N.J.A.C. 11:3-16. The reproposed rules do not contain this section; comparable provisions are set forth in reproposed N.J.A.C. 11:3-16.

COMMENT: One commenter stated that the penalty provisions of N.J.A.C. 11:3-18.4(b)2 and 11:3-18.5(b)3 are beyond the statutory authority of the Department.

RESPONSE: The Department disagrees. The statute requires insurers to file an annual informational filing in the form and manner approved by the Commissioner. Submitting an incomplete filing constitutes a failure to do so for which penalties may be imposed in the same manner as the failure to take any other required action. Likewise, flex rate filings may be implemented only upon submission of a satisfactory informational filing. Failure to make that filing, while implementing increased rates, requires the specific action to halt the use of the rates, as set forth in the answer to a previous comment.

COMMENT: A commenter stated that proposed N.J.A.C. 11:3-18.6(d) and (e) are vague and overly ıbroad.

RESPONSE: These provisions have been redrafted in the reproposed rules. The Department is attempting through these rules to obtain prompt disposition on information requests, which have in the past created significant delays in the processing of rate filings that require prior approval. In doing so, the Department is attempting to resolve all informational questions promptly, before the matter is found to require a hearing. This process is intended to substitute in virtually all circumstances for the normal rights of discovery during the hearing process by resolving the data request issues beforehand. Any other process is likely to delay hearings beyond the time frame for disposition set forth in N.J.S.A. 17:29A-14.

COMMENT: A commenter requested an opportunity for a hearing on the issue of completeness when an informational filing is determined by the Department to be incomplete.

RESPONSE: The filer would have a full opportunity for a hearing on the completeness of the filing, and any other issues, in connection with any penalties sought to be imposed.

COMMENT: The same commenter suggested that a hearing process be provided for prior approval findings that are determined to be incomplete.

RESPONSE: The Department disagrees that this is needed. A filer who submits a prior approval filing that is determined on first reading to be incomplete may resubmit it and request it be heard. Establishing a separate hearing process on the incompleteness would likely result in a bifurcation of the hearing and unnecessarily delay final disposition.

COMMENT: A commenter objected to the procedures for processing prior approval filings, stating that the Department and the Public Advocate could delay implementation of a new rate filing for well over six months.

RESPONSE: These procedures have been revised in the reproposed rules. In doing so, the Department has attempted to be sensitive both to the need for a prompt disposition and the meaningful participation of the Public Advocate as a provided statute. If a hearing is not required, a final order disposing of the filing will be issued within 90 days of receipt of the filing; if a hearing is requested, the hearing should occur and the decision issued within an additional 90 days. These time frames would resolve rate filings requiring prior approval much more expeditiously than has been the case under prior law and practice. At the same time, the Department believes that the procedures provide due process for both the filer and the public as represented by the Public Advocate.

COMMENT: A commenter objected to the provisions of N.J.A.C. 11:3-18.6 which allow the Public Advocate to request the filer provide additional information other than that required to clarify or explain information contained in the filing.

RESPONSE: These sections have been revised in the reproposed rules. As stated in the answer to a previous comment, it is the Department's intention to limit the data that must be provided during the review and hearing process, in view of the substantial data required initially pursuant to N.J.A.C. 11:3-16. The Department believes this will expedite the hearing process by avoiding the need for discovery proceedings once the matter has been determined to require a hearing. Nevertheless, it is necessary that a fair opportunity be provided to exchange further information when necessary. These reproposed rules are intended to provide strict time frames within which such requests may be issued and a determination made on whether the information must be supplied.

COMMENT: One commenter stated that the proposed rules for review of prior approval filings do not provide any opportunity for discovery by the filer.

RESPONSE: The sections regarding exchange of information have been revised in the reproposed rules, although no specific right of discovery, or time frame in which it may occur, is provided to the filer. In order for such a request to be meaningful, the filer would have to request data or explanation from the Public Advocate after the Public Advocate's report was submitted, or more than 60 days after receipt of the filing. Providing the filer with an opportunity to make data requests, and for the Public Advocate to respond, would delay disposition of the matter unnecessarily since these requests are infrequently made.

The reproposed rules require the report of the Public Advocate and requests for hearing if any to be in sufficient detail so that the issues are clear.

COMMENT: A commenter inquired about N.J.A.C. 11:3-18.3(h), which authorizes the Commissioner to relax or modify rules establishing time limits when good cause is shown. The commenter inquired whether the filer would have an opportunity to participate in this consideration.

RESPONSE: Both the filer and the Public Advocate may request or object to any action taken pursuant to this section. The Department does not desire to set forth specific procedures for such requests and objections; to do so would unnecessarily formalize these interlocutory decisions and thereby engender delay.

COMMENT: A commenter suggested numerous changes in the time frames, but offered no explanation for any of them. Generally, the commenter suggested that the time within which the filer had to act be extended and the time within which the Department or Public Advocate had to act be significantly shortened.

RESPONSE: The Department disagrees with the time limits for various actions as suggested by this commenter. The Department believes that the time frame for specific actions in the reproposed rules is realistic but provide for prompt resolution of all filings consistent with statutory provisions and the requirements of due process.

With regard to the 60 days provided for the Department to determine whether an informational or flex rate filing is complete, the Department notes that the informational filings are due July 1 of each year, the same date as excess profits reports. Flex rate filings may also be submitted at the same time. Considering the substantial amount of such items to be processed by the Department, and further considering that the review for completeness will almost always serve as a final resolution of the filing, 60 days is an appropriate amount of time.

COMMENT: A commenter objected to the provisions permitting the Public Advocate to obtain both explanatory information and additional information. It stated that if additional data was required by the Public Advocate for its review, the Public Advocate should do so by commenting during the rule-making process with regard to N.J.A.C. 11:3-16.

RESPONSE: As stated in the response to previous comments, these reproposed rules seek to limit the exchange of data problems that in the past have taken a great deal of time and delayed resolution of rate filings. These reproposed rules and the rules on rate filing requirements are expected to expedite the review process by requiring more information initially and thereafter strictly controlling the kind of data that must be supplied. Nevertheless, there must be some provision to obtain both explanatory information and additonal information. If this did not occur prior to determining whether a hearing was necessary, it would have to occur as discovery during the formal hearing process. This would most certainly delay an expeditious resolution of the matter.

COMMENT: A commenter expressed a concern with respect to both N.J.A.C. 11:3-18.1(c) and various provisions of N.J.A.C. 11:3-16 that filings not be considered "incomplete" because the filer was unable to compile the information requested, even though it had been collected.

RESPONSE: This point was addressed in the reproposed provisions of N.J.A.C. 11:3-16.11(b). It has been modified to clarify the Department's intent that a filing would not be considered incomplete if the data were not collected, nor collected in a manner so as to facilitate reporting in the past. Filers are required, of course, to begin to implement systems to collect and/or compile required information in the future.

COMMENT: A commenter requested that the period to cure deficiencies in annual informational filings be extended from 30 to 60 days, particularly for the 1989 filing.

RESPONSE: The reproposed rules will be applicable to informational filings beginning in 1990. By that time all filers should be sufficiently familiar with the processes to be able to remedy an incomplete filing within 30 days of notice.

Proposed N.J.A.C. 11:3-18.1 sets forth the purpose and scope of the subchapter.

Proposed N.J.A.C. 11:3-18.2 contains definitions of words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-18.3 sets forth general provisions applicable to all filings.

Proposed N.J.A.C. 11:3-18.4 sets forth procedures for review of annual informational filings.

Proposed N.J.A.C. 11:3-18.5 sets forth procedures for review of flex rate filings.

Proposed N.J.A.C. 11:3-18.6 sets forth procedures for review of rate fiilngs that require the prior approval of the Commissioner.

Proposed N.J.A.C. 11:3-18.7 confirms that these reproposed rules do not preclude the Commissioner from initiating actions regarding rates pursuant to other applicable statutes.

Social Impact

The reproposed new rules will affect the Department of Insurance, the Department of the Public Advocate, and insurers and rating organizations that make filings of private passenger automobile insurance rates

in the voluntary market. It will have a positive impact on all parties in that it sets forth orderly processes for the review of these matters by the Department and the manner by which parties participate in the process.

Economic Impact

Since these reproposed rules simply articulate processes within the Department of Insurance that are presently required to be done, it does not have a measurable economic impact. To the extent that they may result in an expedited resolution of automobile insurance rate filings, it will have a positive economic impact on the Department and parties interested in these matters.

Regulatory Flexibility Analysis

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" would include insurance companies authorized to write private passenger automobile insurance which file rating information.

Since the rule simply describes internal processes for the review of rate filings by the Department of Insurance, a Regulatory Flexibility Analysis is not required because these reproposed rules do not impose reporting, recordkeeping or other compliance requirements on small businesses.

Full text of the reproposed rules follows:

SUBCHAPTER 18. PRIVATE PASSENGER AUTOMOBILE INSURANCE: RATE FILING REVIEW PROCEDURES

11:3-18.1 Purpose and scope

(a) This subchapter sets forth the procedures used by the Department to review voluntary market private passenger automobile insurance rate filings and implements N.J.S.A. 17:29A-1 et seq.

(b) This subchapter applies to the following kinds of automobile insurance rate filings submitted to the Department:

1. Annual informational filings made pursuant to N.J.S.A. 17:29A-36.2b;

2. Flex rate filings made pursuant to N.J.S.A. 17:29A-44; and

3. Rate change filings that require prior approval of the Commissioner made pursuant to N.J.S.A. 11:29A-14.

(c) This subchapter shall be construed so as to be compatible with the rules that set forth requirements for rate filings, N.J.A.C. 11:3-16; the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.; and the administrative procedure rules, N.J.A.C. 1:1 and 1:11 concerning the disposition of matters after they have been determined to be a contested case.

11:3-18.2 Definitions

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

"Annual informational filing" means a filing made in accordance with the provisions of N.J.S.A. 17:29A-36.2b and N.J.A.C. 11:3-16.4 or 16.7(a).

"Contested case" means any proceeding so defined in N.J.S.A. 52:14B-2(b), specifically including a prior approval filing when request for a hearing has been made by any party or when the Commissioner determines that a hearing on the filing is necessary.

"Department" means the New Jersey Department of Insurance.

"Day" means a calendar day.

"Filer" means a rating organization or any insurer making its own rates or a portion thereof, establishing or proposing to establish a new rate or rate change, or making an annual informational filing.

"Flex rate filing" means a filing made pursuant to N.J.A.C. 11:3-16.5 or 16.7(c) to adjust rates within limits set in accordance with the provisions of N.J.S.A. 17:29A-44 and applicable orders of the Commissioner.

"Prior approval filing" means a filing made pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-16.6 or 16.7(d) to alter, supplement, or amend rating systems or any part thereof, except flex rate filings.

"Parties" includes the filer, the Public Advocate, and any other person with a legal right to participate in the proceedings who has served notice on the Commissioner of its intention to participate.

"Public Advocate" means the Division of Rate Counsel, Department of the Public Advocate of New Jersey.

"Qualified member" of a rating organization means an insurer member or subscriber of a rating organization whose total written car years insured on a calendar year basis, is equal to or less than two percent on January 1, 1989, 1.5 percent on January 1, 1990 and one percent on or after January 1, 1991, of the total written car years insured by all insurers writing motor vehicle insurance in this State in the voluntary market, pursuant to N.J.S.A. 17:29A-6.1a2.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of making rates or a portion thereof for two or more insurers and licensed in accordance with N.J.S.A. 17:29A-2.

11:3-18.3 General provisions applicable to all filings

(a) Filings may be submitted by insurers or licensed rating organizations which are authorized to file rates for insurers which are members or subscribers of the rating organization.

1. Insurers required to make their own rates pursuant to N.J.S.A. 17:29A-6.1a(2), which are not qualified members of rating organizations as defined in N.J.A.C. 11:3-18.2 shall make filings themselves.

2. Filings submitted by rating organizations shall be submitted only for and on behalf of their qualified member companies.

(b) In computing any period of time fixed by this subchapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is on a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(c) All documents filed with the Commissioner, except initial filings, shall contain a statement certifying that the item is being submitted within the time provided by this subchapter.

(d) Provisions of this subchapter that establish time limits may be relaxed or modified by the Commissioner for good cause shown.

(e) A determination by the Department that a filing is complete relates solely to the presence in the filing of the items required by N.J.A.C. 11:3-16 and shall not be considered a finding regarding the accuracy or reasonableness of the information or calculations.

(f) All filings and other items submitted to the Commissioner shall be sent to the Department at the following address:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

(g) Any filing or other item submitted to the Public Advocate shall be sent to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
744 Broad Street—30th Floor
Newark, New Jersey 07102

11:3-18.4 Procedures for review of annual informational filings

(a) The Department's review of an annual informational filing shall commence upon the day that the filing is received.

(b) If the filing is incomplete, the Department shall so advise the filer not later than 60 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. Notice to the filer that the filing is incomplete shall specify the missing item(s) or information. The notice shall advise the filer that the deficiency must be cured within 30 days of receipt of notice, and that failure to cure the deficiency within 30 days of receipt of notice may result in imposition of penalties as provided by law.

(c) If any annual informational filing is not made, or if an incomplete filing is not cured within 30 days of receipt of notice, the Commissioner may commence proceedings to impose penalties on the filer as provided by law.

11:3-18.5 Procedures for review of flex rate filings

(a) The Department's review of a flex rate filing shall commence upon the day that the filing is received.

(b) The Department shall advise the filer if the filing is incomplete not later than 60 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. A notice to the filer that the filing is incomplete shall specify the missing item(s) or information. The notice shall advise the filer that the deficiency must be cured within 30 days of receipt of the notice. The notice shall further advise the filer of its right to a hearing on the issue of completeness, and of the consequences of failure to cure the deficiency, as provided in (c) below.

(c) If the filer has not cured the deficiency within 30 days of notice, or if the filer has not requested a hearing in writing within 10 days of notice, the Commissioner may enter an Order directing the filer to cease using the flex rates set forth in the filing; directing the filer to use its rates in effect prior to making the flex rate filing; and directing the filer to file a plan to refund or adjust the rates of any insured whose policy was issued or renewed using the rates set forth in the flex rate filing.

(d) A filer may request a hearing on the issue of completeness. Any such request shall be made in writing and shall contain facts or legal arguments that adequately support the filer's contention that the filing is complete as submitted.

(e) Not later than 10 days after receipt of a request for hearing, the Commissioner shall determine whether the matter requires a hearing and so notify the filer in writing.

1. If the matter is found to require a hearing, the Commissioner may hear the matter; direct that the matter be transmitted to the Office of Administrative Law for further proceedings; or appoint a salaried employee of the Department to hear the matter pursuant to N.J.S.A. 17:29A-14c.

2. As a condition to scheduling the hearing, the Commissioner may order the filer to establish a separate interest-bearing escrow account, into which the funds collected on account of the flex rate increase shall be deposited, pending the outcome of the hearing.

(f) Further proceedings on the matter shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

11:3-18.6 Procedures for review of prior approval filings

(a) The Department's review of a prior approval filing shall commence the day the filing is received. The filer shall serve a copy of the filing on the Public Advocate simultaneously with making the filing with the Department, pursuant to N.J.A.C. 11:3-16.3(e), and the filing shall contain a certification by an officer of the filer that a copy was so served.

(b) The Public Advocate shall notify the Department and the filer if it intends to intervene no later than 10 days after receipt of a filing.

(c) The Department shall advise the filer if the filing is incomplete not later than 25 days after receipt of the filing.

1. The filing shall be deemed to be complete if the filer is not notified that the filing is incomplete.

2. Notice to the filer that the filing has been found to be incomplete shall specify the missing item(s) or information.

3. The Department shall send a copy of the notice that the filing is incomplete to the Public Advocate, if notice of intent to intervene has been received.

4. The Department may return the filing to the filer with the notice that it is incomplete with a statement that it has been disapproved as a nonconforming filing. Any resubmission of the filing after the deficiency has been cured shall be considered initial receipt.

(d) If the Department requests further information from the filer, which information must be provided to the Department upon request pursuant to N.J.A.C. 11:3-16.8, 16.9 or 16.10, the filer shall submit the information to the Department, and simultaneously to the Public Advocate, within 15 days of the receipt of the request.

(e) The Department deems the filing requirements set forth in N.J.A.C. 11:3-16 to be sufficient information to review and evaluate any rate change requested. Therefore, no supplemental information beyond limited discovery to seek clarifying or explanatory information should be required. The following procedures may be used to obtain clarifying, explanatory or supplemental information if necessary:

1. Not later than 20 days after receipt of a filing, the Public Advocate may request in writing that the filer provide information that may be necessary to clarify or explain information contained in the filing. Not later than 10 days after receipt of any such request, the filer shall provide the clarifying or explanatory information to the Public Advocate and simultaneously to the Department.

2. Not later than 20 days after receipt of a filing, the Public Advocate may petition the Commissioner for an Order directing the filer to provide additional data, information or documents, other than that required to clarify or explain information contained in the filing.

i. The petition shall include a list of the data, information or documents to be provided and show good cause why the additional information or documents are required. A copy of the petition shall be sent simultaneously to the filer, which may file a responsive statement within five days.

ii. Upon receipt of such a petition, and after consideration of any responsive statement by the filer, the Commissioner may either direct the filer to provide all or part of the information or documents within a specified time, or deny the petition.

iii. A decision of the Commissioner directing the filer to provide additional data, information or documents in accordance with this section may include a reasonable extension of time within which the Public Advocate may file its report and recommendation, and further include a reasonable extension of time within which any party may request a hearing.

iv. Copies of any correspondence between the parties, and any additional information or documents supplied at the direction of the Commissioner, shall also be provided to the Department.

(g) Not later than 60 days after receipt of a filing, the Public Advocate shall file with the Department its report and recommendations, and simultaneously submit a copy to the filer.

(h) Not later than 60 days after receipt of a filing by the Department, either the Public Advocate or the filer may request in writing a hearing on the filing. A request for hearing shall include a statement of facts and issues in sufficient detail so as to notify the Department and any other party of the matters in dispute.

(i) Upon receipt of a request for a hearing, or not later than 75 days after receipt of a filing by the Department, the Commissioner shall determine whether the matter is a contested case and notify all parties in writing.

1. If no hearing is requested the Commissioner shall enter an appropriate final order disposing of all issues raised by the filing. The final order shall be issued not later than 90 days from receipt of the filing, except for good cause the Commissioner may extend the time to issue a final Order by not more than 30 days.

2. If a hearing is requested the Commissioner may hear the matter; direct that the matter be transmitted to the Office of Administrative Law; or may appoint a salaried employee of the Department to hear the matter pursuant to N.J.S.A. 17:29A-14c.

(j) The hearing shall be conducted pursuant to the provisions of N.J.S.A. 17:29A-14c and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and applicable administrative rules, N.J.A.C. 1:1 and 1:11.

11:3-18.7 Other remedies preserved

Nothing in this subchapter shall prevent the Commissioner from at any time initiating an action pursuant to N.J.S.A. 17:29A-1 et seq. to direct that rating systems be altered or revised if found to provide for, result in, or produce rates which are unreasonable, inadequate, or which discriminate unfairly between risks in this State involving essentially the same hazards and expense elements.

(a)

DIVISION OF ACTUARIAL SERVICE

Individual Health Insurance Rate Filings

Proposed Repeal and New Rule: N.J.A.C. 11:4-18.4

Proposed Amendment: N.J.A.C. 11:4-18.5

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(c), 17B:26-1 et seq.

Proposal Number: PRN 1989-588.

Submit comments by December 6, 1989 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The rules at N.J.A.C. 11:4-18 mandate the standards for individual health insurance rate filings. N.J.A.C. 11:4-18.4 sets out specifically the requirements to be met by insurers in making rate submissions to the Department of Insurance ("Department"). In practical usage, however, this section has proven to be ambiguous with regard to the information which needs to be included in a filing submission to effectuate an adequate and timely review and approval by the Department.

The Department is obligated to ascertain that rates are adequate for the insurer's sound operation, and that the rates meet the loss ratio standards at N.J.A.C. 11:4-18.5. The Department must also determine that the rates are fair, equitable and nondiscriminatory. These determinations cannot be made without the actuarial assumptions employed by the insurer in developing the rate submissions. The rule, however, does not require that an insurer file its assumptions. While most insurers provide the Department with their assumptions upon request, the entire process may be expedited if the rule is amended to state that the necessary materials be filed at the time of the rate submission, and specifies the bare essentials which must be included.

Knowledge of specific methodology and assumptions is particularly important in assessing rate revisions. When an insurer files a rate revision, the Department cannot effectively evaluate the reasonableness of the aggregate loss ratio calculated by the insurer to justify the rate revision. This is because the current rule does not require an insurer to file all of the information necessary for the Department to assess the insurer's aggregate loss ratio. Most notably, insurers are not required to demonstrate each year's premiums and claims (benefits) which enter into the calculation of the anticipated loss ratio.

The proposed new rule and amendment would require submission of the basic criteria used by the insurer to develop its rates. The new rule and amendment will clarify what information must be filed, and in what manner the information should be submitted. Review by the Department will determine whether an insurer's assumptions and calculations are actuarially sound and in compliance with State law.

The language of N.J.A.C. 11:4-18.4(a) is proposed to be excised substantially, and replaced. Also proposed is the addition of new subsections (b) and (c). N.J.A.C. 11:4-18.4(b) specifically addresses rate revisions, while N.J.A.C. 11:4-18.4(c) mandates certain requirements for continued marketing of any policy form.

As proposed, N.J.A.C. 11:4-18.4(a) will require every insurer to include as part of the informational filing the number of years a policy form is to be sold in this State, and the expected number of policies from that form expected to be sold annually. Insurers must report the anticipated loss ratio calculated over the life of the policy form. This information should identify the present value of both the future benefits and future premiums, as well as the future benefits and future premiums for the years recognized in the calculation of the anticipated loss ratio. In neither instance should the future benefits nor future premiums reflect, include or be adjusted for, any statutorially required additional actuarial active life reserve. This reserve must be identified separately for each year utilized in the anticipated loss ratio calculation, as well as the number of policies the insurer expects to be in-force at the end of each such year. The actuarial basis and method used in determining any such statutorially required additional active life reserve must be included.

Insurers must disclose the expected incurred/earned loss ratio for each year recognized in the calculation of the anticipated loss ratio. The expected incurred claims must equal the future benefits plus the change in any statutorially required additional actuarial life reserve for each year used in the anticipated loss ratio calculation. The expected earned premiums must equal the future premiums for each such year.

Realistic assumptions must be demonstrated for benefit provisions for which premiums are determined separately. The information must include annual claim costs, select and/or anti-select morbidity factors, termination rates and any skewing therein resulting from modal premium payments. Secular trend factors, interest rates and expenses by policy duration must be included. Insurers must identify the number of policies expected to be sold with specific preexisting condition waivers or endorsements which conditions result in substandard morbidity, as well as the number of policies expected to be issued with additional premium due to substandard morbidity. A statement of the underwriting standards used for the policy form must also be included.

Insurers must demonstrate that unfair pricing discrimination is not incorporated within the policy form's premium table or structure. A certification stating that the assumptions used are appropriate, that they reasonably represent the expected experience for the policy, and fully disclose the basis of the calculation of the anticipated loss ratio must accompany the filing.

Proposed new N.J.A.C. 11:4-18.4(b) requires insurers to include in rate revision submissions the policy form's aggregate loss ratio as calculated over the life of the policy as of the effective date of the proposed rate revision. The submission must include the number of policies issued and expected to be in-force on December 31 in each calendar year that is included in the calculation of the aggregate loss ratio.

Insurers must also submit for each calendar year reflected in the calculation, the benefits and premiums unadjusted by any statutorially required additional actuarial life reserve. Any such reserve should be reported separately for each year, and the actuarial basis and method by which the reserve is determined must be demonstrated. The information submitted must include the incurred/earned loss ratios for each calendar year utilized in the aggregate loss ratio. All of the foregoing information should include separate statements for the policy issues of each of the five most recent calendar years, as well as the policy issues of all other calendar years combined.

Information provided must be relevant for New Jersey policy experience. Insurers must use either information for policies delivered in this State only, or must normalize premiums to a New Jersey premium basis if non-New Jersey policy information is included in the rate revision submission. The method and amount of the adjustment for each calendar year must be included with the submission. Guidelines for when the Department deems it appropriate for insurers to use non-New Jersey information are stipulated.

N.J.A.C. 11:4-18.4(b)8 specifies that approval for a rate revision will not be forthcoming if the revision will result in an aggregate loss ratio which is less than the anticipated loss ratio for that policy form. Furthermore, N.J.A.C. 11:4-18.4(c), as proposed, requires insurers to cease the issue of delivery of any policy form in New Jersey whenever the premium table for that policy form will result in an anticipated loss ratio differing by more than 10 percent from the anticipated loss ratio in any previous calendar year.

N.J.A.C. 11:4-18.5 sets out the loss ratio standards to be applied to various types of individual health policies. The proposed amendment incorporates a standard for group conversion policies, requiring such policies to provide and maintain at least a 75 percent loss ratio. Because the conversion policy emanates from the group policy, the underwriting or marketing expenses involved with the conversion policy are minimal. The Department, therefore, views the 25 percent margin available to insurers for expenses and profit on these policies to be adequate.

Social Impact

The proposed new rule and amendment ultimately will have an effect on the policyholder's premiums. The new rule and amendment will permit the Department to more easily scrutinize rate submissions for errors, discrepancies, deficiencies, excesses and unfair discrimination in the rating and pricing processes employed by insurers.

By requiring insurers to base information on New Jersey experience only, or to normalize information to a New Jersey basis, the Department will be better able to enforce insurer compliance with State standards for loss ratios, as well as other policy requirements. This will benefit consumers by maintaining appropriate premiums to the costs of benefits.

Economic Impact

There should be little or no adverse economic impact resulting from compliance with proposed new N.J.A.C. 11:4-18.4. The information requested is information insurers already utilize in rate programming; thus, accessing the information should represent no economic hardship. This is also true for the Department: the information specified herein is the same basic information which would normally be requested by the Department if not initially supplied by the insurer. No additional staff or facilities are necessary to handle these filings.

The economic impact of the proposed amendment to N.J.A.C. 11:4-18.5 will also be minimal. Heretofore, the Department has been enforcing the 75 percent loss ratio standard for group conversion policies via the statutory authority set out at N.J.S.A. 17B:26-1h. Thus, most insurers offering this type of health policy are currently familiar with and in compliance with the proposed loss ratio standard.

Regulatory Flexibility Analysis

The Department believes that few, if any, insurers affected by the proposed new rule and amendment are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any small business which may be affected, however, would not be exempted from the new rule and amendment, since the rules do not request information which would present an undue hardship for the insurer to collect and file. All insurers should be addressing their rate development by substantially similar means, meeting sound actuarial principles, regardless of the insurer's size.

Full text of the proposal follows (additions indicated in bold face **thus**; deletions indicated in brackets [thus]):

11:4-18.4 Rate submission requirements

[(a) Each insurer shall include with each submission of new or revised rates the following information and material:

1. An actuarial memorandum which shall include the following:

i. The anticipated loss ratio;

ii. The specific formulas and methodology used in calculating gross premiums;

iii. An explanation and documentation supporting the premium assumptions;

iv. The objective basis for rate differentials; and

v. A certification signed by the company's Actuary that the information given in the actuarial memorandum is appropriate and that the benefits provided are reasonable in relation to the premiums charged.

2. In connection with rate revisions only, the aggregate loss ratio, a statement of the reason for the revision, and an estimate of the expected average increase or decrease in premium both in dollars and percent.]

(a) Every insurer shall submit its rates for filing by the Commissioner for each policy form to be delivered or issued for delivery in this State, which submission shall include:

1. The number of years for which the policy is expected to be delivered or issued for delivery in this State, and the number of policies expected to be delivered or issued for delivery for each form in each such year;

2. The anticipated loss ratio calculated over the life of the policy form, with separate disclosures of the present value of future benefits and the present value of future premiums utilized in the calculation of the anticipated loss ratio, where any statutorially required additional actuarial active life reserve is neither reflected in the future benefits nor the future premiums in the calculation;

3. The future benefits and the future premiums for each of the years recognized in the calculation of the anticipated loss ratio, where neither the future benefits nor the future premiums include, or are adjusted, for any statutorially required additional actuarial active life reserve;

4. For the rate submission being made, the number of policies expected to be in force in this State at the end of each year which information shall also include and identify any statutorially required additional actuarial active life reserve maintained with respect to such policies reflected in the calculation of the anticipated loss ratio for the policy form, with disclosure of the actuarial basis and method used in determining the reserve;

5. The expected incurred/earned loss ratio for each of the years recognized in the calculation of the anticipated loss ratio, wherein:

i. The expected incurred claims shall equal expected paid claims adjusted for changes in the expected claim liabilities and claim reserves and in any expected statutorially required additional actuarial active life reserve for each such year; and

ii. The expected earned premiums shall equal premiums expected to be received adjusted for any changes in expected advance premiums and in expected unearned premium reserves for each such year, but changes in any expected statutorially required additional actuarial active life reserves shall not be included in the adjustment of premiums expected to be received;

6. The realistic assumptions used in the calculation of the loss ratios for each benefit provision wherein the premiums are determined separately:

i. The annual claim costs (ultimate) by attained age and sex;

ii. The select and/or antiselect morbidity factors by policy duration (year) by issue age and sex;

iii. The lapse and mortality rates, or total termination rates, by policy duration by issue age and sex, and any skewing of those rates occurring within a policy year resulting from modal premium payments;

iv. The secular trend factors by policy duration by issue age and sex, which secular trend factors, when used in the calculation of the anticipated loss ratio, shall not be applied for a period greater than the number of years for which trending is reflected in the calculation of premiums;

v. The interest rates by policy duration, which rates shall equal an insurer's recent, current and future expected new investment return rates (after investment expenses, but before federal income taxes);

vi. Expenses by policy duration, including commission, override and bonus rates; other marketing expense rates; other maintenance expense rates; any new-market expense rates; other acquisition expense rates; and the explicit profit margin or risk charge, on a per policy issue, per policy in force, per dollar of claim, per dollar of premium, and any other applicable bases;

vii. The periods and methods of amortization of acquisition expenses and of any new-market expenses in the calculation of premiums;

viii. The distribution of expected policy issues by policy and rider benefits by issue age and sex;

ix. The distribution of expected policy issues by mode of premium payment, wherein bank draft shall be deemed a separate mode from regular monthly;

x. The percentage of the number of policies expected to be issued with a waiver or exclusion from coverage rider or endorsement of a specific preexisting physical, mental or medical condition which results in substandard morbidity;

xi. The percentage of policies expected to be issued with extra premiums for any physical, mental or medical conditions which result in substandard morbidity; and

xii. A summary statement of the underwriting standards (for example: short form medical and risk questionnaire, long form medical and risk questionnaire, medical examination), the marketing distribution system, and the market (for example: middle income, professional, etc.) for the policy form;

7. The cell and cell weights, when a model office is used in the calculation of the anticipated loss ratio;

8. A demonstration evidencing that unfair pricing discrimination is not utilized by or incorporated within the policy form's premium table or structure:

i. The demonstration shall show that the nonrecognition or the homogenization of the elements of any insurance construct will not result in an anticipated loss ratio which would differ by more than 10 percent from the anticipated loss ratio of any element of the construct if the elements of the construct were separately recognized or were not homogenized.

ii. For the purpose of this subsection, construct shall mean the risk variables which significantly affect the cost of the coverage. For example, age could be a construct wherein its elements would be age 20, age 21, age 22, and so forth; and

9. A certification signed by an actuary who must be a member of the Society of Actuaries or Casualty Actuarial Society, stating that the assumptions are appropriate to the policy form, reasonably represent the expected experience for the policy form and fully disclose the basis of the calculation of the anticipated loss ratio.

(b) Every insurer shall submit its revised rates for filing by the Commissioner for each policy form delivered or issued for delivery in this State. The rate submission shall include the policy form's aggregate loss ratio on the basis of realistic assumptions, calculated over the life of the policy form, as of the effective date of the proposed rate revision.

1. The submission shall include both the number of policies issued (actual or expected) in each calendar year, and the number of policies in force (actual or expected) in this State on December 31 of each calendar year, which calendar years are included in the calculation of the aggregate loss ratio.

2. The submission shall include for each calendar year the benefits and premiums, whether actual past or expected future, utilized in the calculation of the aggregate loss ratio, which benefits and premiums shall not have been adjusted by any statutorially required additional actuarial life reserves. The filing shall also include separately for each such calendar year any statutorially required additional actuarial life reserves, and the actuarial basis and method by which such reserves are determined.

i. The submission required by this paragraph and by (b)3 below shall include separate statements for the policy issues of each of the five most recent calendar years including the calendar year for which the rate revision is to be effective, and also the policy issues of all other calendar years combined.

ii. The submission may combine the calendar year projections for the policy issues for each calendar year separately reported with the projections for the policy issues of all other calendar years so long as not less than six calendar years of experience (actual or projected) for each of the five calendar years of issue shall be separately reported.

3. The submission shall include the incurred/earned loss ratio, whether actual past or expected future, for each calendar year, which calendar years were recognized in the calculation of the aggregate loss ratio.

4. The submission shall include separate statements of the accumulated value of past benefits, the present value of future benefits, the accumulated value of past premiums and the present value of future premiums utilized in the calculation of the aggregate loss ratio.

5. In calculating and submitting the information required by (b)2 through 4 above, the information shall be inclusive of and a reflection of policies delivered or issued for delivery in this State only, except when the sum of the mean calendar-year exposures of such policies for all calendar years preceding the calendar year for which the aggregate loss ratio is being calculated is, or is expected to be less than K, in which case, the calculation and submission for (b)2 through 4 above shall be based on data for policies delivered or issued for delivery by the insurer in all states.

i. K shall have the following values:

Issue age less than 65	K
Principal or capital sum	5,000
Accident only	4,000
Medical expense	
No deductible	2,000
Deductibles under $1,001	2,500
Deductibles $1,001 to $9,999	3,000
Deductibles over $10,000	3,500
Disability income	
Hospital indemnity	2,000
Elimination periods 60 days and less	2,500
Elimination periods 61 days thorugh 365 days	3,000
Elimination periods over 365 days	3,500
Issue ages 65 and over	
Principal or capital sum	5,000
Accident only	4,000
Medical expense	1,000
Hospital indemnity	1,000
Other	As determined by the Commissioner of Insurance

For policy forms with multiple benefit provisions or variable benefit parameters, the dominant provision and parameter shall determine the K value.

ii. When the policies issued in all states constitute the basis for the submission made under this subsection, the premiums for non-New Jersey policies shall be adjusted for the calculation of the aggregate loss ratio and the incurred/earned loss ratios. The adjustment shall normalize such premiums to a New Jersey premium basis because of differences between the statutorially required loss ratios in the other states or jurisdictions and the loss ratios required or resulting from compliance with New Jersey law. The adjustment also shall normalize such premiums to a New Jersey basis for any other similar reasons which shall be fully disclosed and acceptable to the Commissioner of Insurance. The method and amount of adjustment for each calendar year shall be included with the information.

iii. The mean calendar-year exposure of the policies for any calendar year shall equal for each policy form the arithmetic average of the number of policies in force (actual or expected) on December 31 of the previous calendar year and the number of polices in force (actual or expected) on December 31 of that calendar year where the numbers are taken from (b)1 above.

6. The filing shall include the information and materials specified at (a) above, including the actuarial certification, appropriate to the calculation of the aggregate loss ratio.

7. The secular trend factors used in the calculation of the aggregate loss ratio shall not be applied for a period greater than the number of years for which trending was reflected in the calculation of the original premiums for the policy form.

8. The rate revision shall be such that, following the revision, the aggregate loss ratio shall not be less than the anticipated loss ratio appropriate to the policy form.

(c) An insurer shall cease the issue and delivery of any policy form offered in this State at the end of any calendar year whenever the premium table for the policies to be delivered or issued for delivery in the commencing calendar year will result in an anticipated loss ratio which would differ by more than 10 percent from the anticipated loss ratio of any earlier calendar year, if the policies of each calendar year were separately recognized and not combined in the calculation of the anticipated loss ratio for the policy form.

11:4-18.5 Loss ratio standards

(a) For new forms, the benefits provided are presumed reasonable in relation to the premiums charged if the anticipated loss ratio meets the following standards:

1. For over age 65 coverage **which is not provided through a group conversion policy or contract**, the ratio is at least 65 percent;

2. For accident only coverage, the ratio is at least 50 percent;

3. For short term nonrenewable trip policies which do not cover loss due to sickness, the ratio is at least 40 percent;

4. For coverage other than as listed in **(a)** 1, 2 and 3 above and which [are] **is not provided through a group conversion policy or contract, but which is**:

i. Collectively renewable insurance, the ratio is at least 60 percent;

ii. Guaranteed renewable insurance or nonrenewable for stated reasons only insurance, the ratio is at least 55 percent;

iii. Noncancellable insurance or noncancellable and guaranteed renewable insurance, the ratio is at least 50 percent.

5. For coverage provided through a group conversion policy or contract, the ratio is at least 75 percent;

[5.] **6.** For any insurance not listed in (a) 1 through [(a)4] **5** above, the ratio is at least 55 percent.

(b) (No change.)

(a)

DIVISION OF PROPERTY-LIABILITY

Commercial Insurance: Rating Plans for Individual Risk Premium Modification

Proposed New Rules: N.J.A.C. 11:13-6

Authorized By: Kenneth D. Merin, Commissioner, New Jersey Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and 17:29AA-29.

Proposal Number: PRN 1989-585.

Submit comments by December 6, 1989, to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

This proposed new subchapter establishes rules for commercial insurance rating plans that companies may use to modify rates to develop premiums for individual risks.

N.J.S.A. 17:29AA-5 requires all insurers to file their rates and rules not later than 30 days after becoming effective. N.J.S.A. 17:29AA-14 prohibits insurers from charging or collecting rates other than those provided according to the filed rates and rules. These proposed rules provide for filing rating plans that provide pricing flexibility to recognize differences in individual risks and modify the premium accordingly.

Present practice of the Department has permitted the filing of these plans, but no specific standards were articulated by rule. It is appropriate that these standards be published in rules for the information of all filers and for the proper administration of the Department. The proposed rules set forth standards generally consistent with those currently applied and provide a limit of total variation from the filed rates of 25 percent. In accordance with N.J.S.A. 17:29AA-10, the standards are intended to prevent use of plans that result in excessive, inadequate or unfairly discriminatory rates.

Proposed N.J.A.C. 11:13-6.1 sets forth the purpose and scope, which is to establish standards for commercial insurance rating plans to modify rates in the development of premiums for specific risks.

Proposed N.J.A.C. 11:13-6.2 sets forth definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:13-6.3 sets forth the requirements to file a risk premium modification plan.

Proposed N.J.A.C. 11:13-6.4 sets forth the elements of the plan that should be included in the filing.

Proposed N.J.A.C. 11:13-6.5 sets forth the standards that should be included in the plan.

Proposed N.J.A.C. 11:13-6.6 sets forth the standards for applying the plan to individual risks.

Social Impact

These proposed rules set standards for individual premium risk modification plans filed by insurers of commercial risks and thus impact both insurers and insurance purchasers. Risk premium modification plans provide limited flexibility to vary the price of a policy based on the characteristics of a specific risk. Pricing flexibility promotes competition among insurers and thus improves the commercial insurance market by making insurance more available and affordable. These proposed rules also contain limits on pricing flexibility, however, to contain the potential for large, short-term swings in price and to prevent impermissible discrimination between similar risks.

Economic Impact

These proposed rules will impact commercial line insurers and those who purchase commercial insurance. They will have a negligible impact on the Department because these rating plans are currently being submitted and reviewed, albeit without the clear standards set forth in an administrative rule.

These proposed rules will permit insurers to price individual policies more accurately, within specified limits above and below their filed rates, based upon the actual risk undertaken. For those insureds with better risk characteristics, insurance will be priced lower. For those insureds with poorer risk characteristics, insurance will be priced higher to reflect the greater risk. Over time, however, this pricing flexibility will improve market competition and thus promote both increased availability and lower premiums. The limits on individual risk premium modification plans as set forth in the rule will provide some price stability.

Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurers of commercial risks.

Most insurers that qualify as "small businesses" use the services of a rating organization for rate and form filings. Nevertheless, there may be insurers that independently file rates and forms that qualify as "small businesses" according to the statutory definition.

These proposed rules make no distinction between plans filed by small businesses and those filed by other insurers. The filing requirements are minimal and are currently being met by insurers of all sizes that wish to provide the benefits available through such plans.

These proposed rules set forth general standards for the development and implementation of individual risk premium modification plans that may be used when an insurer chooses to develop and implement such a plan to improve its pricing flexibility. They provide for flexibility in pricing individual risks different than set forth in filed rates. As such, they improve the competitive position of small businesses as well as others.

No professional services are required to comply with these rules, other than the qualified personnel of a company choosing to file an individual risk premium modification plan. The recordkeeping requirements are minimal and are simply the kinds of records a prudent company using such a plan would keep in any event.

The rules attempt to minimize adverse economic impact by providing general standards that may be chosen to be used by an insurer. The rules do not mandate that companies offer these plans; it articulates the reporting and recordkeeping requirements when they choose to do so.

Full text of the proposal follows:

SUBCHAPTER 6. COMMERCIAL INSURANCE: RATING PLANS FOR INDIVIDUAL RISK PREMIUM MODIFICATION

11:13-6.1 Purpose and scope

(a) This subchapter establishes standards for commercial insurance rating plans to modify rates in the development of premiums for specific risks.

(b) These standards are intended to:

1. Recognize expected loss differentials based on factors applied using sound underwriting principles;
2. Promote competition among insurers in the rating of individual commercial risks;
3. Promote fair and equitable treatment of insureds; and
4. Encourage loss control and safety measures.

(c) This subchapter applies to all insurers and rating organizations that file rates for commercial lines insurance.

11:13-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Base rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium, which rate is filed with the Commissioner pursuant to N.J.S.A. 17:29AA-5.

"Commercial lines insurance" includes all insurance policies so defined in N.J.S.A. 17:29AA-3a.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Filer" means a rating organization or any insurer making its own rates and proposing to establish a new rate, a rate change, or a rating rule.

"Individual risk premium modification plan" includes any plan of rates and rules for the adjustment of premiums from base rates for commercial lines insurance coverages.

"Policy" means any contract of commercial lines insurance including, but not limited to, all policies, contracts, certificates and endorsements.

"Supplementary rate information" includes any manual or plan of rates, statistical plan, classification, rating schedule, rating rule and any other rule used by an insurer in making rates.

11:13-6.3 Rating plans for individual risk premium modification

(a) Filers may submit individual risk premium modification plans that provide for modification of rates in the development of premiums for specific risks.

(b) An individual risk premium modification plan must be filed with the Commissioner in accordance with N.J.S.A. 17:29AA-5 and this chapter.

(c) An individual risk premium modification plan being applied by any insurer as of the date of adoption of this rule shall be refiled to conform with the requirements of this subchapter within six months from its adoption.

(d) No insurer shall charge or collect from any insured a premium for any commercial lines insurance policy that deviates from the base rates filed with the Commissioner, except in accordance with an individual risk premium modification plan filed with the Commissioner in accordance with this subchapter.

11:13-6.4 Elements of plan

(a) An individual risk premium modification plan shall consist of rating rules that set forth the following:

1. The criteria for an insured's eligibility for premium modification as described in the plan;

2. A list or lists of underwriting factors and such descriptive statements or explanations as may be necessary to understand the application or use of each factor;

3. The maximum debit for each factor;

4. The maximum credit for each factor; and

5. The total maximum debits and credits for all factors combined.

(b) An individual risk premium modification plan shall include a statement by the filer that the plan is submitted pursuant to, and will be applied in accordance with, the provisions of this subchapter.

11:13-6.5 Standards for individual risk premium modification plans

(a) No policy shall be eligible for application of premium modification except as follows:

1. Commercial auto: Annual policy minimum premium of $5,000 covering at least five insured vehicles.

2. Commercial other than automobile: Annual policy minimum premium of $2,500.

3. Business owner's policy: Annual policy minimum premium of $1,500.

(b) Underwriting factors described in the plan shall be reasonably related to an increase or decrease in the risk or expense expected.

(c) Maximum debits for each underwriting factor in the plan shall equal maximum credits for each underwriting factor in the plan on a percentage basis.

(d) An individual risk premium modification plan shall provide for a maximum 25 percent debit or credit from base rates for any single policy.

11:13-6.6 Application or use of individual risk premium modification plans

(a) Individual risk premium modification plans shall not be used in a manner that results in excessive, inadequate or unfairly discriminatory rates.

(b) Individual risk premium modification plans shall be applied uniformly to all insureds who qualify for debits or credits in accordance with the plan as filed.

(c) No individual policy premium shall be modified until the debits and credits applicable to both risk and expense modification in accordance with an individual risk premium modification plan are determined by an inspection of the property.

(d) Insurers shall develop and retain information in their underwriting file about the application of an individual risk premium modification plan to any modification of an individual policy premium. This shall include any information used to determine the eligibility for debit or credit in accordance with the filed plan, such as inspection reports, photographs, results of engineering or professional evaluations, claim history, etc.

(e) Insurers shall make this information available for examination by the Department, or supply it to the Department within 10 days of written request.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Unsatisfied Claim and Judgment Fund Rules

Proposed Repeals: N.J.A.C. 13:18-2 and 13:18-10

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3.

Proposal Number: PRN 1989-576.

Submit written comments by December 6, 1989 to:

Glenn R. Paulsen, Director
Division of Motor Vehicles
25 South Montgomery St., 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles is proposing the repeal of N.J.A.C. 13:18-2, Unsatisfied Claim and Judgment Fund Board, and 13:18-10, Unsatisfied Claim and Judgment Fund's Reimbursement of Excess Medical Expense Benefits Paid by Insurers, because the Unsatisfied Claim and Judgment Fund and its board have been statutorily transferred from the Division of Motor Vehicles to the Department of Insurance pursuant to P.L. 1985, c. 148. The Department of Insurance has promulgated new rules, effective May 15, 1989, pertaining to the interdepartmental transfer of regulatory authority with regard to the Unsatisfied Claim and Judgment Fund and its board (see 21 N.J.R. 688(a); 21 N.J.R. 1363(a)). The new rules promulgated by the Department of Insurance and codified at N.J.A.C. 11:3-27 are nearly identical to those presently codified at N.J.A.C. 13:18-2. The new rules promulgated by the Department of Insurance and codified at N.J.A.C. 11:3-28 pertain to the same subject as those presently codified at N.J.A.C. 13:18-10. In view of the foregoing, the rules contained in N.J.A.C. 13:18-2 and 13:18-10 are unnecessary and the Division therefore proposes the repeal of N.J.A.C. 13:18-2 and 13:18-10.

Social Impact

The proposed repeals will have a beneficial social impact in that the repeal of the Division of Motor Vehicles' regulations pertaining to the Unsatisfied Claim and Judgment Fund and its board will eliminate possible confusion with regard to the fact that the Unsatisfied Claim and Judgment Fund and its board have been statutorily transferred from the Division of Motor Vehicles to the Department of Insurance pursuant to P.L. 1985, c.148.

Economic Impact

The proposed repeals have no economic impact on the State of New Jersey or its citizens.

Regulatory Flexibility Statement

The proposed repeals do not impose reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:18-2 and 13:18-10.

(a)

DIVISION OF CONSUMER AFFAIRS AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE

Provisional Licensure as Audiologist or Speech-Language Pathologist

Proposed Repeal: N.J.A.C. 13:44C-4

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.
Authority: N.J.S.A. 45:3B-24.
Proposal Number: PRN 1989-577.

Submit written comments by December 6, 1989 to:
Richard Weisman, Executive Director
Audiology and Speech-Language
Pathology Advisory Committee, Room 500
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed repeal of N.J.A.C. 13:44C-4 eliminates the current subchapter on provisional licensure of audiologists and speech-language pathologists. The Committee's enabling statute, N.J.S.A. 45:3B-1, in particular N.J.S.A. 45:3B-12, provides that no provisional licenses shall be issued after five years from the effective date of the Audiology and Speech-Language Pathology Licensing Act. Since the act became effective on January 5, 1984, provisional licenses were no longer issued as of January 5, 1989. The current rules regarding provisional licensure are therefore no longer lawful or necessary.

Social Impact

This proposed repeal will have a positive social impact in that it will assure the consumer that all licensees meet current regulatory and statutory standards for licensure.

Economic Impact

Since this proposed repeal is merely a "housekeeping" measure designed to conform the existing rules to the Committee's enabling statute, it will have no economic impact on licensees or on the general public.

Regulatory Flexibility Statement

Since the proposed repeal does not impose bookkeeping, recordkeeping or other compliance requirements upon small businesses, the analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is not required. The proposed repeal is merely a technical change designed to conform the existing rules to the Committee's enabling statute.

Full text of the proposed repeal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

SUBCHAPTER 4. [PROVISIONAL LICENSURE AS AUDIOLOGIST OR SPEECH-LANGUAGE PATHOLOGIST] **(RESERVED)**

[13:44C-4.1 Applications

(a) Applications for provisional licensure may be obtained at the office of the Advisory Committee, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(b) All applications for provisional licensure shall be accompanied by the fee set forth in N.J.A.C. 13:44C-2.2.

13:44C-4.2 Requirements for provisional licensure

(a) Applicants for provisional licensure shall submit satisfactory proof of the following to the Advisory Committee:

1. Graduation from a bachelor's degree program from an accredited college or university acceptable to the New Jersey Department of Higher Education;

2. Having been actively engaged in the practice of audiology or speech-language pathology or both in New Jersey for three of the last five years immediately preceding January 5, 1984;

3. Working toward fulfillment of the requirements for licensure as an audiologist or speech-language pathologist;

4. The name and credentials of the supervisor and the applicant's place of employment; and

5. A plan of provisional licensee supervision which meets the requirements of 13:44C-4.5.

13:44C-4.3 Supervision plan; forms

The applicant's supervisor must document the supervision plan on a form provided by the director.

13:44C-4.4 Application deadline; renewal

For applicants who applied for a license prior to February 12, 1987 and were found eligible for provisional licensure, the provisional license shall be in effect for a period of two years and may be renewed once. No provisional licenses shall be issued after February 12, 1989.

13:44C-4.5 Supervision

(a) A holder of a provisional license may work only under the supervision of a licensed audiologist or speech-language pathologist, as appropriate, who shall be responsible for the actions of the provisional licensee.

(b) Supervision shall consist of no less than one hour of on-site direct supervision per 20 hours of direct, face-to-face evaluation or therapeutic services and shall take place not less than once a month.]

(b)

DIVISION OF CONSUMER AFFAIRS OFFICE OF CONSUMER PROTECTION

Home Improvement Practices Contract Requirements

Proposed Amendment: N.J.A.C. 13:45A-16.2

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.
Authority: N.J.S.A. 56:8-4.
Proposal Number: PRN 1989-562.

Submit written comments by December 6, 1989 to:
James J. Barry, Jr., Director
Division of Consumer Affairs, Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Division's rules concerning Home Improvement Practices became effective April 1, 1980. Among other provisions, they require that all home improvement contracts for more than $25.00 be in writing. In the nine years since the rules were promulgated, inflation has rendered the $25.00 threshold unreasonably low. The Division therefore proposes to increase to $200.00 the price at which a written contract for covered services is required. Covered services include such items as repairs by plumbers and electricians, as well as remodeling jobs, painting of residential property, installation of equipment, installation of carpeting and other floor coverings, etc.

Social Impact

Consumers are well aware that the cost of services covered by the Home Improvement Practices rules has greatly increased in the nine-year period since the rules became effective. In many cases, the present threshold no longer covers the basic fee for a service call, no less the labor and goods necessary to do even a small job. Because the new threshold is far more realistic than the previous $25.00, the Division believes that the change will be understandable and acceptable to consumers, upon whom no appreciable adverse impact is expected. Judging by the Division's record of home improvement complaints, the jobs where a written contract is essential for protection of the consumer typically cost more than $200.00. Anything under that amount must today be considered a small job or purchase, entailing minimal financial risk to the consumer.

The various suppliers of home improvements will be favorably affected by the amendment which will free them from the task of preparing a written contract for relatively minor jobs.

Economic Impact

The proposed amendment will save time and consequently money for home improvement contractors and their personnel, since a written contract will no longer have to be prepared for jobs priced under $200.00. Little additional economic impact on the public is expected; the increase

merely reflects inflation and the Division's belief that $200.00, at today's prices for home improvements, is an acceptable risk threshold. Below that figure, a loss because there was no written contract, while disagreeable, would not be devastating to the average consumer.

Regulatory Flexibility Analysis

It is impossible to ascertain accurately the number of parties affected by this proposed amendment, since the definition of home improvement services covers a wide variety of suppliers, ranging from sellers of aluminum storm windows to home remodelers. Also, the home improvement field is always in flux, with enterprises constantly going in and out of business. The only numbers available to the Division are those for business permits for licensed electrical contractors (approximately 6,500) and licensed master plumbers (approximately 7,000).

The great majority of suppliers of home improvements are small businesses. This amendment, however, lessens rather than increases compliance requirements because the amendment would increase the $25.00 threshold for a written contract to $200.00. It is therefore expected to eliminate written contracts for many small jobs, such as minor plumbing and electrical repairs. Most of the latter work is requested urgently by the consumer; the burden of having to prepare a written contract under time pressure is now lifted.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:45A-16.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56-8.1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, or performance of home improvements shall be unlawful thereunder:

1.-11. (No change.)

12. Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of [$25.00] **$200.00**, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

i.-vi. (No change.)

13. (No change.)

(a)

DIVISION OF STATE POLICE

Boat Safety Course

Proposed New Rules: N.J.A.C. 13:61

Authorized By: Colonel Clinton L. Pagano, Superintendent, Division of State Police.

Authority: N.J.S.A. 12:7-60.

Proposal Number: PRN 1989-595.

Submit comments by December 6, 1989 to:

Captain James Momm
Division of State Police
Marine Law Enforcement Bureau
River Road
P.O. Box 7068
West Trenton, NJ 08628-0068

The agency proposal follows:

Summary

N.J.S.A. 12:7-60 requires that: "The Superintendent of the State Police establish a list of approved boat safety courses offered by public or private persons or agencies, for profit or otherwise. Approved courses shall provide formal instruction on power vessel handling and safety. The Superintendent may approve a boat safety course upon his own initiative or by application on a form to be created by the Superintendent." The rules herein proposed specify those factors and procedures for approval as a Boat Safety Course.

Social Impact

The proposed new rules will have a positive social impact. Primarily, the proposed new rules are to increase the public safety and property protection while utilizing the waterways of this State.

Economic Impact

The economic impact on the regulated community should be minimal. Costs associated with the applicant's approval would be borne by the applicant.

Environmental Impact

The proposed new rules would have no direct, significant environmental impact.

Regulatory Flexibility Analysis

It is estimated that a small number of "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may be impacted by the proposed new rules. In order to comply with the proposed new rules, a boat safety course applicant will have to submit a cover letter, written course outline, full course text containing the minimum requirements, and a list of reference material. The initial and annual capital costs of complying with the proposed rules will be minimal.

Full text of the proposal follows:

CHAPTER 61
BOAT SAFETY COURSE

SUBCHAPTER 1. BOAT SAFETY COURSE REQUIREMENTS

13:61-1.1 Purpose

This chapter prescribes the procedure and conditions for obtaining approval of a boat safety course for the formal instruction in power vessel handling and safety, and the establishment of a list of approved boat safety courses as pursuant to N.J.S.A. 12:7-60.

13:61-1.2 Definitions

For the purpose of this chapter, the terms set forth herein are defined as follows:

"Approved course" means a boat safety course as approved by the Superintendent of the Division of State Police pursuant to N.J.S.A. 12:7-60.

"Boat safety course" means an approved course by the Superintendent of the Division of State Police pursuant to N.J.S.A. 12:7-60.

"Notice of approval" means written notice from the Superintendent of the Division of State Police of approval of a submitted application set forth at N.J.A.C. 13:61-1.3, Application for Approval, and satisfaction of the requirements for approval set forth at N.J.A.C. 13:61-1.4, Requirements for Approval.

"Notice of Intent to Revoke" means written notice from the Superintendent of the Division of State Police as set forth at N.J.A.C. 13:61-1.8(b), Revocation of approval.

"Superintendent" means the Superintendent of the Division of State Police.

13:61-1.3 Application procedure

(a) An application for approval shall consist of and be submitted in the following manner:

1. A cover letter on the submitting public, private person or agency's letterhead shall contain a request for approval and be signed by either the submitting party's chief executive officer, president or individual of equal authority.

2. Submitted along with the cover letter shall be a written course outline, full course text containing the minimum requirements as set forth at N.J.A.C. 13:61-1.4, and a list of reference material.

3. Application for approval as a boat safety course shall be forwarded to:

Superintendent of State Police
c/o Marine Law Enforcement Bureau
River Road
P.O. Box 7068
West Trenton, NJ 08628-0068

13:61-1.4 Requirements for approval

(a) An approved boat safety course shall include the following course material:

1. Vessel Description:
i. Definition/classification;
ii. Types; and
iii. Hull designs.
2. Vessel Registration:
i. Boat titling law;
ii. Registration law;
iii. Registration numbers;
iv. Documented vessels; and
v. Hull identification number.
3. Equipment:
i. Personal flotation devices;
ii. Fire extinguishers;
iii. Sound producing devices;
iv. Navigational lights;
v. Visual distress signals;
vi. Ventilation;
vii. Flame arrestors;
viii. Mufflers;
ix. Capacity;
x. Marine sanitation devices; and
xi. Anchors.
4. Preparation:
i. Trailers;
ii. Weather and sea conditions; and
iii. Float plan.
5. Operation:
i. Navigation rules;
ii. Aids to navigation;
iii. Accidents;
iv. Responsibility; and
v. Mooring.
6. Procedures and Practices:
i. Fueling;
ii. Anchoring;
iii. Loading; and
iv. Waterskiing.
7. Post Operation:
i. Security;
ii. Storage; and
iii. Preventive maintenance.

(b) An approved boat safety course shall provide a minimum of eight hours of formal instruction.

(c) Upon the completion of the formal instruction, an approved examination shall be administered and successful completion shall be required.

13:61-1.5 Duration of approval

(a) An applicant's approval will be documented by the issuance of a Letter of Approval from the Superintendent.

(b) An approval as evidenced by a Letter of Approval from the Superintendent shall be valid for two years from the date of its issuance.

(c) An application for reapproval of a course shall be submitted pursuant to N.J.A.C. 13:61-1.3, Application procedure, and 13:61-1.4, Requirement for approval.

13:61-1.6 Inspection of approved courses

The Superintendent or designee may inspect any approved course to verify the requirements for approval set forth at N.J.A.C. 13:61-1.4, Requirements for approval, are being satisfied.

13:61-1.7 Approval of out-of-State boat safety courses

The Superintendent may recognize any out-of-State boat safety course which satisfies the minimum requirements for approval as set forth at N.J.A.C. 13:61-1.4, Requirements for approval.

13:61-1.8 Intent to revoke; revocation

(a) The Superintendent may revoke the approval of an approved course for failure to satisfy any requirements as set forth at N.J.A.C. 13:61-1.4, requirements for approval, pending any hearing provided for by law or these rules.

(b) A notice of intent to revoke an approved course shall be in writing from the Superintendent, stating the reason(s) for possible revocation, and effective date thereof.

(c) A notice of revocation of an approved course shall be in writing from the Superintendent stating the reason(s) for revocation and the effective date.

(d) Any course revoked by the Superintendent may seek future approval pursuant at N.J.A.C. 13:61-1.3, Application procedure, and 13:61-1.4, Requirements for approval.

13:61-1.9 Hearings

(a) In the case of the denial of an application, or the refusal to renew an application or notice of intent to revoke, or revocation of an approval, the Superintendent shall notify the applicant or approved party in writing of same and shall state the reasons for the action.

(b) Upon such notification, the Superintendent shall afford the applicant or approved party, an opportunity to be heard thereon in person or by counsel. A request for such an opportunity to be heard shall be made in writing to the Superintendent within 15 days from the receipt of notice provided at N.J.A.C. 13:61-1.8, Intent to revoke; revocation.

(c) If a request for an opportunity to be heard is timely received, the Superintendent shall set a date for hearing and notify the parties of the time and place thereof. Such a hearing shall be conducted by the Superintendent or designee.

(d) All hearings shall be held in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:61-1.10 Administration

Administrative files will be maintained by Marine Law Enforcement Bureau, Division of State Police and will include applications, copies of Letters of Approval, Notices of Intent to Revoke/Revocation.

TRANSPORTATION

(a)

BUREAU OF UTILITY AND RAILROAD ENGINEERING

Public Utility Rearrangement Agreements

Proposed Amendments: N.J.A.C. 16:24-1.1, 1.2 and 1.3

Proposed Repeal and New Rule: N.J.A.C. 16:24-1.4

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.5 and 52:14B-1 et seq.

Proposal Number: PRN 1989-564.

Submit comments by December 6, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), and the requirements of the Administrative Procedure Act, the Department of Transportation proposes to amend and establish a new rule in N.J.A.C. 16:24, Public Utility Rearrangement Agreements.

The rules were reviewed and analyzed by the Department's staff of the Bureau of Utility and Railroad Engineering in compliance with the Department's ongoing rulemaking and review process and the recent Re-

organization Plan. This review and analysis revealed that the rules required revisions and updating to conform with present procedures.

N.J.A.C. 16:24-1.1 to 1.3 effect title changes conforming to the reorganization plan of the Department.

Proposed new N.J.A.C. 16:24-1.4 contains new criteria to be followed upon executing railroad agreements.

Social Impact

The proposed amendments to N.J.A.C. 16:24-1.1 to 1.3 are technical in nature, reflecting Department reorganization, and no social impact is anticipated. Proposed new rule N.J.A.C. 16:24-1.4 provides in greater detail than the current rule the Departmental process for developing railroad agreements. This information, which is a reflection of current practice, should be of assistance to railroads in dealing with the Department.

Economic Impact

The proposed amendments to N.J.A.C. 16:24-1.1 to 1.3 are technical in nature, reflecting Department reorganization, and no economic impact is anticipated. The proposed new rule sets forth Departmental responsibilities regarding, and areas to be addressed in, railroad agreements. Railroad cost involved in arriving at the agreement and operating thereunder will vary with each project. However, railroad costs involved in the agreement portion of the project are such as would be incurred in the normal course of business. Departmental costs will be limited to those involved in this rulemaking, since the proposed practices are a reflection of those under which the Department presently operates.

Regulatory Flexibility Statement

The proposed amendments and new rule do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily effects administrative and organizational changes in agreements with utilities.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

CHAPTER 24
PUBLIC UTILITY REARRANGEMENT AGREEMENTS

SUBCHAPTER 1. AGREEMENTS AND ORDERS

16:24-1.1 Requirements

Agreements and/or orders shall be executed for the Department only by the Commissioner or [his] **the Commissioner's** designated representative after preliminary approval by the [Chief Engineer, Design and the State Highway Engineer] **Director, Division of Roadway Design (Chief Engineer of Roadway Design)**.

16:24-1.2 Approval

Schematic plans developed jointly by the Utility Company and the Department are reviewed by the [Chief] **Manager,** Bureau of [Utilities] **Utility and Railroad Engineering** and the most feasible plans approved for more detailed engineering study and cost analysis. After final approval of a mutually acceptable scheme of rearrangement by the [Chief] **Manager,** Bureau of [Utilities] **Utility and Railroad Engineering,** the company is requested to prepare detailed plans and estimates. Utility work may be incorporated in the [road] **Department's construction** contract in which case plans and specifications are jointly prepared for incorporation in the [road] **Department's construction** contract plans.

16:24-1.3 Execution and distribution

(a) The [Chief] **Manager**, Bureau of [Utilities] **Utility and Railroad Engineering** shall prepare an agreement or order covering the proposed work for execution by the utility, based on the detailed plans and estimates submitted by the utility. The agreement shall specify the following items:

1.-3. (No change.)

4. The timing of work relative to coordination with the [roadway] **Department's construction** contract;

5. Provisions for insurance coverage approved by the [Chief] **Manager,** Bureau of [Utilities] **Utility and Railroad Engineering;**

6.-8. (No change.)

[(b) The Chief, Bureau of Utilities shall forward the preliminary agreement or order to the Chief Engineer, Design, for approval.]

[(c)] **(b)** [After approval of the preliminary agreement or order, the] **The** [Chief] **Manager,** Bureau of [Utilities] **Utility and Railroad Engineering** shall forward two copies to the utility for execution, and as many copies as required for their files. Two copies shall be returned fully executed by the utility.

[(d)] **(c)** Following execution of agreement or order by the utility, the [Chief] **Manager,** Bureau of [Utilities] **Utility and Railroad Engineering,** shall forward the agreement or order to the [Section Chief, Legal Services] **Transportation Section of the Attorney General's office,** for approval as to form and execution, after which it shall be initiated by the [Chief Engineer, Design and the State Highway Engineer] **Manager, Bureau of Utility and Railroad Engineering and the Director, Division of Roadway Design (Chief Engineer of Roadway Design)**. The agreement shall then be recommended for approval and execution to the Commissioner on a [department] **Department** action slip, which shall be prepared by the [initiating division] **Bureau of Utility and Railroad Engineering.**

[(e)] **(d)** Upon favorable action or an agreement by the Commissioner, one fully executed copy shall be sent to the Director, [of Fiscal Management] **Division of Auditing and Accounting** and the other returned to the utility.

[(f)] **(e)** If the agreement is in the form of an order, upon favorable action or an order by the Commissioner, two copies of the Public Utility Order shall be forwarded to the Board of Public Utility Commissioners for their approval before the Order can be considered effective. Upon approval by the Board of Public Utility Commissioners, one fully executed copy shall be sent to the Director [of Fiscal Management], **Division of Auditing and Accounting** with the Board's approval certificate attached, and one fully executed copy with the Board's approval certificate attached shall be returned to the utility, and copies with photo reproduced signature sheets and facsimile board approval certificates distributed, as required, to all parties concerned.

[16:24-1.4 Railroad agreements

(a) The Chief, Bureau of Utilities shall forward detailed plans to the Board of Public Utility Commissioners during the design stage when an existing or proposed grade crossing is involved, and request the Board's recommendation as to the protection required.

(b) Upon receipt of the docket prepared by the Public Utility Commission describing the necessary protection, the Chief, Bureau of Utilities shall prepare a railroad agreement reflecting the information provided.

(c) The Chief, Bureau of Utilities shall then send one copy of the fully executed agreement to the Board of Public Utility Commissioners for their files.]

16:24-1.4 Railroad agreements

(a) When an existing or proposed grade crossing is involved, the Manager, Bureau of Utility and Railroad Engineering shall schedule a Diagnostic Team meeting to review and make recommendations to the Commissioner of Transportation concerning and describing the necessary protection at the grade crossing.

1. If all parties at interest are in agreement with the recommendations, the matter is referred to the Commissioner for issuance of an order.

2. If meritorious objections are received, the matter is referred to the Office of Administrative Law for adjudication pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, thence to the Commissioner of Transportation for issuance of an order.

3. Upon receipt of the Commissioner's order, the Manager, Bureau of Utility and Railroad Engineering, shall prepare a railroad agreement reflecting the information contained in the order.

4. The Manager, Bureau of Utility and Railroad Engineering, shall forward three copies of the agreement to the railroad for execution. Two copies shall be returned fully executed by the railroad.

5. Following execution of the agreement by the railroad, the Manager, Bureau of Utility and Railroad Engineering, shall forward the agreement to the Transportation Section of the Attorney General's office, for approval as to form and execution, after which it shall be initialed by the Manager, Bureau of Utility and Railroad Engineering,

and the Director, Division of Roadway Design (Chief Engineer of Roadway Design). The agreement shall then be recommended for approval and execution to the Commissioner on a Department action slip, which shall be prepared by the Bureau of Utility and Railroad Engineering.

6. Upon favorable action on the agreement by the Commissioner, one fully executed copy shall be sent to the Director, Division of Auditing and Accounting, and the other returned to the railroad.

(b) For bridges or other non-grade crossing matters, schematic plans developed jointly by the railroad and the Department are reviewed by the Manager, Bureau of Utility and Railroad Engineering, and the most feasible plans approved for more detailed engineering study and cost analysis. After final approval of mutually acceptable scheme of rearrangement by the Manager, Bureau of Utility and Railroad Engineering, the railroad is requested to prepare detailed plans and estimates. Railroad work may be incorporated in the road contract in which case plans and specifications are jointly prepared for incorporation in the Department's construction contract plans.

1. The Manager, Bureau of Utility and Railroad Engineering, shall prepare an agreement covering the proposed work for execution by the railroad, based on the detailed plans and estimates submitted by the railroad. The agreement shall specify the following items:

i. Description of work to be performed and specifications pertaining thereto;

ii. Regulations to be followed in performance of work and billing procedure where State and/or Federal reimbursement is allowed;

iii. Responsibility for the cost of the work and the degree of any cost sharing;

iv. The timing of work relative to coordination with the roadway contract;

v. Provisions for insurance coverage approved by the Manager, Bureau of Utility and Railroad Engineering;

vi. Provisions for temporary railroad reroutes around construction areas if required;

vii. Property rights required and procedure for acquisition; and

viii. Any other provisions required.

2. After approval of the preliminary agreement, the Manager, Bureau of Utility and Railroad Engineering, shall forward three copies to the railroad for execution. Two copies shall be returned fully executed by the railroad.

3. Following execution of agreement by the railroad, the Manager, Bureau of Utility and Railroad Engineering, shall forward the agreement or order to the Transportation Section of the Attorney General's office, for approval as to form and execution, after which it shall be initialed by the Manager, Bureau of Utility and Railroad Engineering, and the Director, Division of Roadway Design (Chief Engineer of Roadway Design). The agreement shall then be recommended for approval and execution to the Commissioner on a Department action slip, which shall be prepared by the Bureau of Utility and Railroad Engineering.

4. Upon favorable action on the agreement by the Commissioner, one fully executed copy shall be sent to the Director, Division of Auditing and Accounting, and the other returned to the railroad.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Turns
Route U.S. 46 in Morris County
Proposed Amendment: N.J.A.C. 16:31-1.3

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.
Proposal Number: PRN 1989-555.

Submit comments by December 6, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish "no left turn" movement along Route U.S. 46 in Mount Olive Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no left turn" movement along Route U.S. 46 in Mount Olive Township, Morris County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.3 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish "no left turn" movement along Route U.S. 46 in Mount Olive Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

Full text of the proposal follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

16:31-1.3 Route **U.S.** 46

(a) Turning movements of traffic on the certain parts of State highway Route **U.S.** 46 described in this [section] **subsection** are regulated as follows:

1. No left turns in Mount Olive Township, Morris County:

i.-ii. (No change.)

iii. Westbound to southbound on East Forest Road.

2. (No change.)

(b)

DIVISION OF PROCUREMENT
Construction Services; Receipt of Bids
Proposed Amendment: N.J.A.C. 16:44-5.1

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.
Proposal Number: PRN 1989-571.

Submit comments by December 6, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will effect administrative and procedural changes in the receipt of bids as outlined in N.J.A.C. 16:44-5.1. The rule was reviewed by the Staff of the Bureau of Construction Services, in compliance with the Department's ongoing review and analysis of its rules within the Administrative Code. The proposed amendment provides the applicable time frame required for the deputy attorney general to make a determination that the proposal meets specific requirements for the Department, and deletes internal procedural references no longer appropriate.

Social Impact

The proposed amendment will effect administrative procedural changes which brings the rules into conformity with current procedures. As the rule as amended codifies internal procedures already practiced, no social impact is expected from the amendment.

Economic Impact

There will be no new costs to the Department as a result of the proposed amendment. There will be no economic impact on the public.

Regulatory Flexibility Statement

As the proposed amendment relates to internal Department processes, no reporting, record keeping or compliance requirements are imposed on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is not, therefore, required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 44
[CONTRACT ADMINISTRATION]
CONSTRUCTION SERVICES

SUBCHAPTERS 1.-4. (No change.)

SUBCHAPTER 5. RECEIPT OF BIDS

16:44-5.1 Requirements

(a) (No change.)

(b) The following [department] **Department** personnel, or their authorized representatives, shall participate:

1.-3. (No change.)

4. A member of his auditing staff, as bid opener; **and**

[5. A deputy attorney general assigned to the department;]

[6.]**5.** A microfilm machine operator, from the records office.

(c)-(i) (No change.)

(j) The deputy attorney general **within two working days** shall determine that the proposal has been properly signed, that the noncollusion [affidavits and the "Appointment of registered agent by nonresident contractors" are] **affidavit is** in proper order; **and** that the proposal guarantees meet the [department's] **Department's** requirements. [Having satisfied himself that all items are in proper form, he shall deliver the proposal and all other documents submitted to the narrator. In the event that a bid must be rejected, he shall inform the presiding officer and the narrator of the reason for rejection, which shall then be announced to the meeting.]

(k)-(l) (No change.)

TREASURY-GENERAL

(a)

DIVISION OF INVESTMENT

State Investment Council

Notice of Administrative Correction and Extension of Comment Period

Common Pension Fund D

Certificates of Ownership; Valuation

N.J.A.C. 17:16-46.1 and 46.5

Take notice that the Department of Treasury has discovered errors in the text of the proposed new rules published in the October 16, 1989 New Jersey Register at 21 N.J.R. 3262(a). The State Police Retirement System was proposed as one of the participating funds which may invest in Common Pension Fund D; however, this system was inadvertently omitted when the proposal was printed. Additionally, a reference to N.J.A.C. 17:16-46.6 was inadvertently printed as N.J.A.C. 17:16-46.16. This notice is published pursuant to N.J.A.C. 1:30-2.7.

Take further notice that, as a result of this correction, the comment period for the proposed new rules published at 21 N.J.R. 3262(a) has been extended to December 6, 1989.

Comments may be submitted by December 6, 1989 to:

Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State St.
CN 290
Trenton, N.J. 08625

Full text of the corrected rules follows (deletions shown in brackets [thus]; additions shown in boldface **thus**):

17:16-46.1 Definition

(a) Pursuant to P.L. 1970, Chapter 270, there is hereby created in the Division of Investment, Department of the Treasury, a common trust fund, to be known as Common Pension Fund D. The following participating funds may invest in said Common Pension Fund D:

1. Police and Firemen's Retirement System;
2. Public Employee's Retirement System;
3. **State Police Retirement System;**
[3.]**4.** Teacher's Pension and Annuity Fund; and
5. Judicial Retirement System of New Jersey.

17:16-46.5 Valuation

Upon each valuation date, as defined in N.J.A.C. 17:16-[46.16] **46.6**, there shall be a valuation for every investment in the Common Fund in the method provided for in this subchapter. The valuation shall be for the principal value per outstanding unit and the income value per outstanding unit.

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Notice of Comment Period Extension

Consultant Selection Process

Proposed Amendments: N.J.A.C. 17:19-10

Take notice that the Division of Building and Construction has extended the public comment period for the proposed amendments to the Consultant Selection Process Rules, N.J.A.C. 17:19-10, published in the October 2, 1989 New Jersey Register at 21 N.J.R. 3074(a), to November 15, 1989.

Submit comments by November 15, 1989 to:

Thomas H. Bush, Director
Division of Building and Construction
Trenton, New Jersey 08625

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Notice of Comment Period Extension
Debarment, Suspension and Disqualification of Person(s)

Proposed Amendment: N.J.A.C. 17:19-3.2

Take notice that the Division of Building and Construction has extended the deadline for receipt of public comments on its proposed amendment to N.J.A.C. 17:19-3.2 published in the October 16, 1989 New Jersey Register at 21 N.J.R. 3272(a) to November 22, 1989.

Submit comments by November 22, 1989 to:
Thomas H. Bush, Director
Division of Building and Construction
CN 235
Trenton, New Jersey 08625-0235

(b)

STATE AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

Affirmative Action Rules
Establishment of Goals
Proposed Amendment: N.J.A.C. 17:27-2.1
Proposed Repeals and New Rules: N.J.A.C. 17:27-5.2 and 7.3

Authorized By: Feather O'Connor, State Treasurer.
Authority: N.J.S.A. 10:5-31 et seq., specifically N.J.S.A. 10:5-36k.
Proposal Number: PRN 1989-594.

Submit comments by December 6, 1989 to:
William Parrish, Chief
State Affirmative Action Office
(Public Contracts)
Department of the Treasury
CN 207
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of the Treasury proposes to amend the definition of minority worker and to propose new rules changing the method used to establish minority and female employment goals for procurement, service, and construction contractors and subcontractors of the State and its instrumentalities. The proposed new rules are expected to provide narrowly tailored employment goals that reflect the availability of qualified minorities and females within the county or counties in which the contractor or subcontractor or construction project is located and the types of jobs available within each contractor's or subcontractor's workforce. The proposed new rules are expected to enhance compliance with these rules by establishing more realistic goals.

N.J.A.C. 17:27-2.1 contains definitions used in this chapter. On October 7, 1988, the Department adopted a revised definition of "minority worker" to include Portuguese and Alaskan natives. This change was made to eliminate the apparent incongruity between the definition of minority used to determine the eligibility of business owners to participate in the minority set-aside purchasing programs and the definition in this chapter for minority workers seeking employment with State contractors. The incongruity between the two definitions as applied to different programs was not inappropriate because the Federal affirmative action guidelines make similar distinctions. Therefore, the definition of "minority worker" in this subchapter is now being changed to reflect the definition used from the inception of this chapter.

N.J.A.C. 17:27-5.2 describes how the employment goals for procurement and service contractors and subcontractors are established. Under the existing rules, there is a five percent minimum goal for each county and goals in excess of the minimum are based on the percentage of adult minorities and females in the population of each county. The proposed new rules provide for individually established goals for each procurement and service contractor and subcontractor based on the affirmative action office's analysis of the job mix within a contractor's or subcontractor's workforce and the availability of qualified minorities and females in occupational classes as reported by the New Jersey Department of Labor.

N.J.A.C. 17:27-7.3 describes how the employment goals for construction contractors and subcontractors are established. Under the existing rules there is a Statewide goal of 6.9 percent for female employment on construction contracts and a minimum goal of five percent for minority workers on construction contracts. Minority goals in excess of the minimum are based on the percentage of adult minorities and females in the population of each county. The proposed new rule provides for individually established goals for each construction contractor and subcontractor based on the county in which the project is located and an analysis by the affirmative action office of the availability of qualified minorities and females for the specific trades used on the project.

Social Impact

The proposed amendment and new rules will have a positive social impact. They will allow the Department of the Treasury to continue the affirmative action public contracts program in full force and effect pursuant to N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127). The new rules are expected to create a more realistic method of establishing female and minority employment goals that will make the program more effective and thus more responsive to the continuing need to insure equal employment opportunity and affirmative action by contractors and subcontractors performing work or providing goods and services under publicly financed contracts.

Economic Impact

Compliance with the proposed amendment and new rules will not cause a direct economic impact on contractors and subcontractors awarded contracts. Enhanced opportunity of employment for minority and female workers should produce a positive, long term economic impact for citizens gaining employment on publicly financed construction contracts and employment with procurement and service contractors and subcontractors.

Regulatory Flexibility Analysis

A large number of construction, procurement and service contractors and subcontractors are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The proposed amendment and new rules will have the impact of causing a minimal increase in reporting and paperwork requirements for small businesses which is outweighed by the benefits of setting and implementing more realistic employment goals for each contractor and subcontractor. Contractors and subcontractors will be required to furnish the job titles of the positions included in their workforce so that the affirmative action office can establish individualized goals. The information required is not of a specialized nature and is standardly available. Once the goals have been established, there will be no need to submit additional information unless there is a change in the type of work being done or a change in location to a different county or any major expansion of the contractor's or subcontractor's workforce. The individualized goals will have a beneficial impact on the contractor's compliance because the goals will directly correlate the availability of qualified minority and female workers by county to the occupational classes of the jobs within the contractor's or subcontractor's workforce.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

17:27-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Minority worker" means a worker who is Black, Hispanic, Asian, **or** American Indian [Portuguese, or Alaskan Native] defined as follows:

1.-3. (No change.)

4. American Indian [or Alaskan native] means a person having origins in any of the original people of North America and who maintain cultural identification through tribal affiliation or community recognition.

[5. Portuguese means a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.]

17:27-5.2 Establishment of goals

[The employment goals for any procurement or service contractor or subcontractor shall be the employment goals for the county in which the procurement or service contractor's or subcontractor's plant, distribution center, or service area is primarily located. If the procurement or service contractor has plants, distribution centers and service areas located in more than one county, goals for each plant, distribution center, and service area workforce shall be the goals of the county in which it is located. In cases in which a public agency, contractor, subcontractor, or affected minority or female worker in writing submits a request to the affirmative action office for a determination of what employment goals should apply for a procurement or service contractor or subcontractor, the affirmative action office shall determine the proper employment goals. Any such employment goal determination by the affirmative action office shall be binding. A minimum five percent goal has been established for each county. All goals in excess of the minimum are based on data and analysis of the workforce provided by the New Jersey Department of Labor, Division of Planning and Research. Figures have been rounded to the nearest whole number. The county goals are as follows:

MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

County	Minority Percentage	Female Percentage
Atlantic	20	45
Bergen	10	43
Burlington	16	40
Camden	16	42
Cape May	8	42
Cumberland	21	45
Essex	42	46
Gloucester	10	40
Hudson	38	44
Hunterdon	5	40
Mercer	19	46
Middlesex	12	43
Monmouth	11	42
Morris	7	42
Ocean	6	40
Passaic	24	43
Salem	15	40
Somerset	8	42
Sussex	5	40
Union	24	43
Warren	5	40]

(a) The affirmative action office shall individually establish the minority and female employment goals for each procurement or service contractor or subcontractor. The affirmative action office shall analyze the types of jobs offered by each procurement or service contractor or subcontractor and compare that analysis to the number of qualified minorities and females available by county in 503 occupational classes as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulation—Detailed Occupations by Race/Hispanic Groups.

(b) When a procurement or service contractor or subcontractor submits an initial employee information report as required by N.J.A.C. 17:27-4.3, the affirmative action office shall schedule an orientation and profile visit within 30 business days of the issuance of a certificate of employee information report to obtain detailed information on which of the 503 occupation classes comprise each of the nine Federal equal employment opportunity (EEO) categories in that procurement or service contractor's or subcontractor's work force. The affirmative action office shall compare that information to the availability data for the county in which the procurement or service contractor's or subcontractor's offices, plants or distribution centers are located to establish the employment goals based upon the occupational mix within the procurement or service contractor's or subcontractor's workforce. When a procurement or service contractor or subcontractor has offices, plants or distribution centers located in more than one county, the affirmative action office shall establish goals for each county.

(c) The affirmative action office shall establish overall goals for each procurement or service contractor or subcontractor based upon the average of the individually established goals for the EEO categories in which that contractor has employees.

(d) Each procurement or service contractor or subcontractor submitting an application for renewal of a certificate of employee information report pursuant to N.J.A.C. 17:27-4.5(c), shall include information detailing the occupational classes that comprise each EEO category within their workforce to provide the affirmative action office with information to establish the individualized goals prior to the compliance review.

(e) In cases in which a public agency, contractor, subcontractor, or affected minority or female worker submits in writing a request to the affirmative action office for a determination of what employment goals should apply for a procurement or service contractor or subcontractor, the affirmative action office shall determine the proper employment goals. Any such employment goal determination by the affirmative action office shall be binding.

17:27-7.3 Establishment of goals

[The minority and female employment goals for any construction contractor or subcontractor shall be the employment goals for the county in which the construction project is located. In determining compliance with the goals, work hours per trade are used to judge performance. The method of establishing minority goals differ from that used to establish the female goal. A minimum five percent minority goal has been established for each county. All goals in excess of the minimum are based on data and analysis of the county workforce provided by the New Jersey Department of Labor, Division of Planning and Research. Figures have been rounded to the nearest whole number. The female county goals are the same Statewide. This goal has been established based on the Federal construction goals for females that is applied nationwide on Federally assisted projects. The affirmative action office may, in appropriate cases, designate a regional goal for minority and female membership in a union which has regional jurisdiction. In cases in which a public agency, contractor, subcontractor, or affected minority or female worker submits a request in writing to the affirmative action office for a determination of what employment goal or goals should apply for a construction contractor or subcontractor, the affirmative action office shall determine the proper employment goal or goals.

MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

County	Female Percentage	Minority Percentage
Atlantic	6.9	20
Bergen	6.9	10
Burlington	6.9	16
Camden	6.9	16
Cape May	6.9	8
Cumberland	6.9	21
Essex	6.9	42
Gloucester	6.9	10
Hudson	6.9	38
Hunterdon	6.9	5
Mercer	6.9	19
Middlesex	6.9	12
Monmouth	6.9	11
Morris	6.9	7
Ocean	6.9	6
Passaic	6.9	24
Salem	6.9	15
Somerset	6.9	8
Sussex	6.9	5
Union	6.9	24
Warren	6.9	5]

(a) The affirmative action office shall individually establish the minority and female employment goals for each construction contractor and subcontractor for each trade on each contract. The affirmative action office shall review the trades to be utilized during the completion of the work as reported on the initial project manning report and determine the employment goals based upon the number of qualified minorities and females available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulation—Detailed Occupations by Race/Hispanic Groups.

(b) The affirmative action office shall provide written notification of the employment goals within seven working days of receipt of the initial project manning report to each construction contractor and public agency awarding the contract.

(c) During the initial job site meeting or first site monitoring visit, the affirmative action office representative shall discuss the construction contractor's and/or subcontractor's plans for attaining the employment goals and the good faith criteria used in determining compliance with this chapter. The affirmative action office shall evaluate compliance with the employment goals by reviewing the utilization of minorities and females as reported in the work hours per trade and the good faith efforts of each construction contractor or subcontractor. The affirmative action office shall calculate the work hours per trade based upon information on monthly project manning reports submitted pursuant to N.J.A.C. 17:27-7.6 and verified by site visits.

(d) Public agencies, contractors, subcontractors or affected minority or female workers may submit written requests to the affirmative action office for a determination of what employment goals should apply for a particular contract. The determination made by the affirmative action office in such cases shall be binding.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations

Proposed Amendments: N.J.A.C. 19:4

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1989-580.

A **public hearing** concerning these proposed amendments will be held on November 22, 1989 at 7:00 P.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by December 6, 1989 to:

Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

In accordance with the Sunset and other provisions of Executive Order 66(1978), the HMDC is required to periodically review its existing rules to determine their continuing usefulness. Accordingly, the HMDC has undergone a review of its rules contained in N.J.A.C. 19:4.

Several sections of the above rules are proposed to be adopted with changes which appear are substantive. The HMDC proposes to make changes to three areas: new or clarified definitions, new provisions concerning the placement or removal of fill and new provisions regarding satellite antennas.

At N.J.A.C. 19:4-2.2, new definitions are added for "building height," "level of service," "neighborhood shopping center," and "satellite antenna." The definition of "floor area ratio" is revised to include parking decks, and railroad right-of-way and industrial spur tracks is deleted from, and water towers and electrical generating stations added to, the definition of "public utility uses: heavy." The definition of "lot" is revised to be more comprehensive in its description.

Clarification as to what does not constitute an obstruction when located in a required yard is made by the proposed amendment to N.J.A.C. 19:4-4.8. Restoration and environmental management of wetlands is added as a permitted use in the marshland preservation zone, at N.J.A.C. 19:4-13.

For numerous zones, the minimum finished floor elevation requirement is modified to require that, for structures within designated 100-year flood zones, such elevation be one foot above the applicable 100-year base elevation determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps. Also in numerous zones, various types of satellite antennas are added as special exceptions.

N.J.A.C. 19:4-4.96 is clarified to provide that professional offices are not permitted uses in light industrial zone B. In the heavy industrial zone, N.J.A.C. 19:4-4.104, bus garages are added as a permitted use.

A technical word usage change is made at N.J.A.C. 19:4-4.123. At N.J.A.C. 19:4-4.126, retail uses are deleted as permitted uses in the public utilities zone, and the permitted use, "[e]lectrical power generating stations, operated by a public utility" is changed to "[m]anufacture of electric power by a public utility."

To N.J.A.C. 19:4-4.135(b) is added a provision that any departure from an approved application for a zoning certificate as depicted on as-built plans is deemed a regulatory violation under N.J.A.C. 19:4-6.24.

Water dependent aspects of marinas within the Waterfront Recreation Zone are added as an exemption under N.J.A.C. 19:4-6.16. Parking design standards under N.J.A.C. 19:4-6.18(e) are amended to include that no parking or aisles serving such parking are permitted in required front yards. Screening of off-street loading areas under N.J.A.C. 19:4-6.18(k) is revised to also require a decorative fence in accordance with N.J.A.C. 19:4-6.18(m). The evergreen plant material aspect of such screening is clarified by the addition of width sufficiency, to be considered together with screen height.

Proposed new N.J.A.C. 19:4-6.18(n) sets forth the standards for permitted satellite antennas. Proposed new N.J.A.C. 19:4-6.18(o) provides the standards for the filling, excavation, regrading and surcharging of land.

Social Impact

These rules will have an impact on all property owners in the Hackensack Meadowlands District (HMD).

The proposed new definitions at N.J.A.C. 19:4-2.2 of "building height", "neighborhood shopping center", "level of service" and "satellite antennas" will have a minimal impact because they only clarify terms used in the District Zoning Regulations.

The change to the definition of "Floor Area Ratio" (F.A.R.) at N.J.A.C. 19:4-2.2 includes parking decks into the calculation of F.A.R. This change will reduce the amount of floor area that would have been otherwise allowed before this change by an amount equal to the floor area of the parking deck. The impact of this change will be an overall reduction in the maximum amount of development when parking decks are proposed.

The changes in the definition of "public utility uses: heavy" will prevent property owners from developing a railroad right-of-way and industrial spur tracks under this use classification. However, water towers and electrical generating stations will now be included wherever this use classification appears. These changes bring the individual uses under this classification in line with the intent of heavy public utilities zone.

The revised definition of "lot" allows flexibility in the designation of a zoning lot of record.

The requirement limiting obstructions in required yards is relaxed and allows small terraces and porches regulated by N.J.A.C. 19:4-4.8. This proposal will occasionally allow shorter setbacks from property lines to structures. It will also allow a property owner to more easily provide amenities to the main facility.

The allowance of a new permitted use, restoration and environmental management of wetlands, in the marshland preservation zone, brings the District Zoning Regulations up-to-date with the latest techniques of wetlands mitigation and enhancement. It provides private property owners in the subject zone with an additional permitted use.

The minimum finished floor elevation requirements were modified to provide for protection against flooding. The modification brings HMDC requirements in line with the requirements of the New Jersey Department of Environmental Protection. The provision of satellite antennas as special exceptions in numerous zones allows for the control of a structure that previously was not addressed by the District Zoning Regulations.

The specific listing of professional offices under the use limitations of the light industrial and distribution "B" zone at N.J.A.C. 19:4-4.96 clarifies HMDC's existing interpretation of this zone's other provisions. No impact is anticipated as a result of this rule. Similarly, bus garages were added as a permitted use to the heavy industrial zone at N.J.A.C. 19:4-4.104 since said use is compatible with other uses in this zone.

Technical changes at N.J.A.C. 19:4-4.123 and at N.J.A.C. 19:4-4.126(a)1 will have no social impact. The deletion of retail uses as a permitted use in the public utility zone will adversely impact those property owners in this zone who were considering developing retail uses. However, this change will have a beneficial impact to the public by deleting an incompatible use.

The provision at N.J.A.C. 19:4-4.125(b) which states that any departure from approved plans as depcited on as-built plans will be considered violations of the District Zoning Regulations, will only impact property owners who do not develop their property in accordance with approved plans.

The added rule at N.J.A.C. 19:4-6.16(c) exempting water dependent aspects of marinas from buffer requirements encourages the provisions of marinas in the waterfront recreation zone. The proposed parking design standards for location of aisles, parking and screening at N.J.A.C. 19:4-6.18(e)(k), will promote the intent of HMDC's regulations to provide an aesthetically pleasing front yard.

The new standards for satellite antennas at N.J.A.C. 19:4-6.18(n) and for filling, excavation, regrading and surcharging of land at N.J.A.C. 19:4-6.18(o) promote the orderly development of land throughout the Hackensack Meadowlands District.

Economic Impact

The proposed changes to N.J.A.C. 19:4 will have no impact on costs, revenues, or other economic impact upon governmental bodies of the State. However, property owners within the Hackensack Meadowlands District can expect some economic impacts.

The revised definition of "floor area ratio" (F.A.R.) at N.J.A.C. 19:4-2.2 will lower the overall maximum density of development in some zones with a resulting decrease in the maximum economic value of property in the subject zones. However, after 20 years of experience, HMDC has found that the maximum density of development with respect to F.A.R. is rarely reached and therefore HMDC expects a minimal economic impact to property owners from this change. Property owners within zones which allow for heavy public utility uses who contemplate railroad right-of-ways or industrial spur tracks as principal uses will be losing the economic benefit of these uses. However, these deleted uses are replaced by new uses which compensate for this economic loss. The other changes and additions to definitions including "building height", "level of service", "neighborhood shopping center", "satellite antenna", and "lot" only clarify terms used in the district zoning regulations and have no economic impact.

Property owners who intend to enhance their buildings with small terraces or porches within required setbacks will now be allowed to do so in accordance with N.J.A.C. 19:4-4.8. These small additions are expected to enhance the economic value of property within the Hackensack Meadowlands District. The new permitted use in the marshland preservation zone at N.J.A.C. 19:4-13, restoration and environmental management of wetlands, is expected to enhance the value of property within this zone. Property owners who are filling wetlands elsewhere in the Hackensack Meadowlands District can use property in the marshland preservation zone as an enhancement or mitigation site in accordance with the requirements of other State or Federal agencies.

The requirement for a higher finished floor elevation in various zones will increase construction costs for all new habitable structures. However, the added long-term flood protection will compensate for these costs. The provision of satellite antennas in numerous zones will enhance the value of the properties which are allowed to have these values.

The clarification of the use limitations of the light industrial and distribution zone "B" (N.J.A.C. 19:4-4.96) is not expected to have any economic impact. The addition of bus garages as a permitted use in the heavy industrial zone (N.J.A.C. 19:4-104) will increase the value of property located in this zone.

Technical changes to words at N.J.A.C. 19:4-4.123 and 4.126 will have no economic impact. The deletion of retail as a permitted use in the public utility zone will reduce the value of the property to owners who were considering developing retail uses. However, no property owner has ever requested a retail use in this zone so the economic impact is expected to be minimal.

The only economic impact of revised N.J.A.C. 19:4-4.125(b), which states that departure from approved plans as depicted on as-built plans will be considered violations, is that fines may be issued when actual construction does not comply with the HMDC approved plans.

The new exemption of water dependent aspects of marinas from buffer requirements will decrease costs for variance applications. The proposed parking design standards for the location of parking aisles and stalls will have no economic impact. The requirement concerning screening of loading areas will have an economic impact due to the additional costs of the required screening. This economic impact will vary depending on the type and amount of screening necessary.

The new regulations for satellite antennas at N.J.A.C. 19:4-6.18(n) and for filling, excavation, regrading, and surcharging of land at N.J.A.C. 19:4-6.18(o) standardize plans which are already provided, and therefore no economic impact is expected.

Regulatory Flexibility Analysis

Presently, all property owners, including small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., within the Hackensack Meadowlands District (H.M.D.) must submit development plans, applications, and fees whenever a new use or structure is proposed on a lot within the H.M.D. While occurring within the context of those requirements, the proposed amendments do not themselves place any additional reporting or recordkeeping requirements on small businesses.

Compliance requirements are changed in respect to what are allowable uses and certain minimum floor elevations, and are codified with respect to filling, excavation, regrading and surcharging of land. The capital cost of compliance and the need for professional services will vary greatly with the nature of the project and the staff resources of the applicant. Given the purpose of the zoning regulations to provide for orderly development of the H.M.D., and the absence of a constant, direct correlation between business size and project impact upon the H.M.D., no differentiation in requirements or exemption for small businesses can be provided. However, any applicant, including small businesses, can have all or a portion of a Commission-charged fee waived upon a showing of good cause pursuant to N.J.A.C. 19:3-1.6(a).

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]:

19:4-2.2 Definitions

The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Building height" means the vertical distance from the lowest grade level at the base of the structure to its highest point.

. . .

"Floor area ratio (F.A.R.)" means the gross floor area of all buildings and structures, **including parking decks,** on the lot divided by the lot area.

. . .

"Level of service" means a measure of the ability of a section of roadway of significant length to carry specific volumes of traffic.

"Lot" means a designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit. Such lot may consist of a single lot of record, a portion of a lot of record, or a combination of the above[.] **and must be under single ownership and within reasonable proximity to one another. A lot can only be created by a recorded agreement to which the HMDC must be included as a party. A lot cannot be created for the purpose of transferring bulk requirements unless the lots of record or portions of lots of record are contiguous and within the same zone.**

. . .

"Neighborhood shopping center" means establishments which provide for the sale of convenience goods (food, drugs and sundries) and personal services (those involving the care of a person or his or her apparel), and those that meet the daily needs of an immediate neighborhood trade area.

. . .

"Public utility uses: heavy" means the following uses operated by any public utility authorized to do business in New Jersey:

1.-2. (No change.)

[3. Railroad right-of-way and industrial spur tracks;]

Recodify existing 4.-7. as **3.-6.** (No change in text.)

7. Water towers;

8. Electrical generating stations.

. . .

"Satellite antenna" means a device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition is meant to include, but not be limited to, what are commonly referred to as satellite earth stations, TVRO's (Satellite Television Receiving Antenna), and satellite microwave antennas.

19:4-4.8 Obstructions in required yards

(a) The following shall not be considered to be obstructions and shall be permitted when located in a required yard:

1. In all yards: Open terraces not over four feet above the average level of the adjoining ground, [but not including a permanently roofed-over terrace or porch;] **terraces, porches or weather protection enclosures projecting six feet or less into the required yard and totalling less than 60 square feet in floor area;** awnings or canopies; steps four feet or less above grade which are necessary for access to a permanent structure or for access to a lot from a street or alley; one-story bay windows and overhanging eaves and gutters, **and fireplaces** projecting 30 inches or less into the **required** yard; arbors; flag poles; signs, when permitted by N.J.A.C. 19:4-6.18; and fences when permitted by N.J.A.C. 19:4-6.18.

2. (No change.)

(b) (No change.)

19:4-4.13 Marshland preservation zone; permitted uses

(a) Permitted uses in the marshland preservation zone include:

1. (No change.)

2. Walkways for nature observations[.];

3. Restoration and environmental management of wetlands.

19:4-4.23A Planned park zone 1; bulk regulations

(a) The bulk regulations for the planned park zone are:

1.-4. (No change.)

5. [Minimal] **Minimum** final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.28 Low density residential zone; special exceptions

(a) Special exceptions in the low density residential zone include:

1.-4. (No change.)

5. Mobile home parks not exceeding the density permitted for other single family dwellings and conforming with all other regulations applicable to development within the LDR district[.];

6. Any satellite antenna exceeding six feet in diameter.

19:4-4.30 Low density residential zone; bulk regulations

(a) Bulk regulations in the low density residential zone include:

1.-4. (No change.)

5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.36 Waterfront recreation zone; special exceptions

(a) When included with a marina meeting the minimum requirements set forth in N.J.A.C. 19:4-4.35(a), the following uses shall be special exceptions:

1.-2. (No change.)

3. Indoor recreational facilities[.];

4. Any satellite antenna exceeding six feet in diameter.

19:4-4.39 Waterfront recreation zone; bulk regulations

(a) The bulk regulations in the waterfront recreation zone are:

1.-4. (No change.)

5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

6. (No change.)

19:4-4.46 Highway commercial zone; special exceptions

(a) Special exceptions in the highway commercial zone include:

1.-3. (No change.)

4. Automobile service stations, no closer than 1,000 feet to each other[.];

5. Any satellite antenna exceeding 12 feet in diameter;

6. Any satellite antenna that must be located on a tower.

19:4-4.49 Highway commercial zone; bulk and density regulations

(a) The bulk and density regulations in the highway commercial zone are:

1.-6. (No change.)

7. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.56 Service—highway commercial zone; special exceptions

(a) Special exceptions in the service-highway commercial zone include:

1.-2. (No change.)

3. Funeral homes and mortuaries[.];

4. Any satellite antenna exceeding 12 feet in diameter;

5. Any satellite antenna that must be located on a tower.

19:4-4.59 Service—highway commercial zone; bulk regulations

(a) The bulk regulations for the service-highway commercial zone are:

1.-3. (No change.)

4. FAR: 0.75 [provided that floor area of hotels, motels and other accommodations for transients and restaurants in such accommodations shall be disregarded for the purposes of this requirement];

5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.66 Research park zone; special exceptions

(a) Special exceptions in the research park zone include:

1.-3. (No change.)

4. Light public utility uses[.];

5. Any satellite antenna exceeding 12 feet in diameter.

6. Any satellite antenna that must be located on a tower.

19:4-4.69 Research park zone; bulk regulations

(a) The bulk regulations in the research park zone are:

1. (No change.)

2. FAR: 2.5 [(for office facilities only)];

3.-4. (No change.)

5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.75 Research distribution park zone; special exceptions

(a) Special exceptions in the research distribution park zone include:

1.-3. (No change.)

4. Light public utility uses[.];

5. Any satellite antenna exceeding 12 feet in diameter;

6. Any satellite antenna that must be located on a tower.

19:4-4.78 Research distribution park zone; bulk regulations

(a) The bulk regulations in the research distribution park zone are:

1.-2. (No change.)

3. FAR: 2.5 [(office facilities only)];

4. (No change.)

5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.85 Light industrial zone A; special exceptions
(a) Special exceptions in light industrial zone A include:
1.-8. (No change.)
9. Hospitals, clinics and medical facilities[.];
10. Any satellite antenna exceeding 12 feet in diameter;
11. Any satellite antenna which must be located on a tower.

19:4-4.88 Light industrial zone A; bulk regulations
(a) The bulk regulations in light industrial zone A are:
1. (No change.)
2. FAR: 2.5 [(for offices only)];
3.-4. (No change.)
5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.95 Light industrial zone B; special exceptions
(a) Special exceptions in light industrial zone B include:
1.-7. (No change.)
8. Hospitals and clinics[.];
9. Any satellite antenna exceeding 12 feet in diameter;
10. Any satellite antenna which must be located on a tower.

19:4-4.96 Light industrial zone B; use limitations
(a)-(e) (No change.)
(f) Professional offices are not permitted uses in this zone.

19:4-4.98 Light industrial zone B; bulk regulations
(a) The bulk regulations in light industrial zone B are:
1. (No change.)
2. FAR: 2.5 [(for offices only)];
3.-4. (No change.)
5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.104 Heavy industrial zone; permitted uses
(a) Permitted uses in the heavy industrial zone include:
1.-15. (No change.)
16. Retail uses[.];
17. Bus garages.

19:4-4.105 Heavy industrial zone; special exceptions
(a) Special exceptions in the heavy industrial zone include:
1. (No change.)
2. Helistops[.];
3. Any satellite antenna exceeding 12 feet in diameter;
4. Any satellite antenna which must be located on a tower.

19:4-4.107 Heavy industrial zone; bulk regulations
(a) The bulk regulations in the heavy industrial zone are:
1.-2. (No change.)
3. FAR: 2.5 [(for offices only)];
4. (No change.)
5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.114 Airport facilities zone; special exceptions
(a) Special exceptions in the airport facilities zone include:
1. (No change.)
2. Business and professional offices[.];
3. Any satellite antenna exceeding 12 feet in diameter;
4. Any satellite antenna which must be located on a tower.

19:4-4.117 Airport facilities zone; bulk regulations
(a) The bulk regulations in the airport facilities zone include:
1.-3. (No change.)
4. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.123 Sports complex zone; land not exempt
(a) Land not exempt from the jurisdiction of the Commission under N.J.A.C. 19:4-4.122 herein shall be rezoned by the Commission [for] **from** the sports complex zone classification within three months after the occurrence of any of the following:
1.-2. (No change.)

19:4-4.126 Public utilities zone; permitted uses
(a) Permitted uses in the public utilities zone include:
1. [Electrical power generating stations, operated] **Manufacture of electric power** by a public utility;
2.-3. (No change.)
4. Automobile service stations[;].
[5. Retail uses.]

19:4-4.127 Public utilities zone; special exceptions
(a) Special exceptions in the public utilities zone include:
1. (No change.)
2. Helistops[.];
3. Any satellite antenna exceeding 12 feet in diameter;
4. Any satellite antenna which must be located on a tower.

19:4-4.129 Public utilities zone; bulk regulations
(a) The bulk regulations in the public utilities zone are:
1.-3. (No change.)
4. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.135 Review and approval of application for a zoning certificate
(a) (No change.)
(b) The zoning certificate so issued shall be deemed to incorporate the approved application, and any violation or departure from the approved application during construction of the facilities and structures therein shown shall be deemed a violation of these regulations as provided in N.J.A.C. 19:4-6.24. **Any departure from the approved application as depicted on as-built plans shall also be deemed a violation of these regulations as provided in N.J.A.C. 19:4-6.24.**
(c) (No change.)

19:4-4.149 Commercial Park Zone; Special exceptions
(a) The following are special exceptions in the Commercial Park Zone:
1. (No change.)
2. Helistops;
3. Hospitals[.];
4. Any satellite antenna exceeding 12 feet in diameter;
5. Any satellite antenna whic must be located on a tower.

19:4-4.152 Commerical Park Zone: Bulk regulations
(a) The following are bulk regulations in the Commercial Park Zone:
1.-4. (No change.)
5. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).
6. (No change.)

19:4-5.10 Implementation Plan
(a) An applicant shall file an implementation plan or plans covering sections or subsections of a specially planned area for which a development plan or plans has already been approved as follows:

1.-3. (No change.)

4. Minimum final finished floor elevations [shall comply with] **for structures within designated 100 year flood zones shall be established one foot above** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-6.16 Wetlands buffer strip; water quality

(a)-(b) (No change.)

(c) Water dependent aspects of marinas within the Waterfront Recreation Zone are exempt from these regulations.

19:4-6.18 Design of structures; provision and design of other improvements, including parking and loading facilities, landscaping, lighting, fencing [and], signs **and satellite antennas**

(a)-(d) (No change.)

(e) Parking design standards include:

1.-10. (No change.)

11. No parking or aisles serving such parking are permitted in required front yards.

(f)-(j) (No change.)

(k) Landscaping:

1.-2. (No change.)

3. Screening:

i.-ii. (No change.)

iii. All off-street loading areas shall be located or effectively screened with **a decorative fence in accordance with (m) below supplemented by** evergreen plant material capable of maturing to a height **and width** sufficient to screen such areas, and vehicles within the areas, from adjacent properties and public right of ways.

iv.-v. (No change.)

4.-9.(No change.)

(l)-(m) (No change.)

(n) Satellite antennas shall be permitted in accordance with the following standards:

1. All satellite antennas shall comply with FCC regulations.

2. All satellite antenna foundation plans shall be submitted for review in plans signed and sealed by a professional engineer.

3. All satellite antennas shall be located in the same lot as the principal use and shall be an accessory use to the principal use.

4. No satellite antenna is to be located on the front yard nor shall it be visible from the front yard.

5. Minimum setback of 10 feet shall be maintained from the foundation of the satellite antenna to the side and rear property lines.

6. All satellite antennas shall be located and screened to minimize motor noise and visual impact from the street and adjacent properties. The screening shall be either landscaping or a fence.

7. The diameter of the satellite antenna shall be as follows:

i. A maximum of six feet in the Low Density Residential Zone and Waterfront Recreation Zone;

ii. A maximum of 12 feet in all the other zones;

iii. A special exception will be required for any satellite antenna exceeding the maximum permitted diameter.

8. No satellite antenna shall be located on the wall of a structure.

(o) Fill, excavation, regrading and surcharge standards are as follows:

1. No filling, excavation, regrading or surcharging of land shall commence without having first obtained zoning approval from the Office of the Chief Engineer. Such zoning approval may be granted as follows:

i. All filling, excavation or grading operations directly related to the construction of any structure shall be considered approved only if such filling, excavation and grading operations are clearly indicated with approximate quantities on the approved plans for the proposed structure.

ii. A zoning certificate for filling, excavation, grading and surcharge operations may be issued by the Office of the Chief Engineer if a schematic site plan showing the envisioned ultimate use of the property is submitted. This plan must meet all applicable bulk and use regulations.

2. Prior to the issuance of any zoning certificate which involves filling operations, a detailed geotechnical investigation report, prepared by a geotechnical engineer, must be submitted for approval. This report shall be prepared in accordance with the following Geotechnical Investigation Report Guidelines:

i. Description of existing soil and ground water conditions in the area to be filled, or built upon, including copies of all soil boring logs, test pit investigations and test reports;

ii. Proposed final/interim uses for the filled area; purpose of the fill or stockpile operation;

iii. Recommended fill operation, including, as required, excavation of existing fill/soils, site preparation, placement of fill, thickness of lifts, compaction, etc.;

iv. Recommended fill material, including type, moisture content, size grading, organic content, etc.;

v. Recommendations for the control of ground water during site work and/or foundation construction;

vi. Analysis of the effects of the proposed fill operation on future construction type/costs;

vii. Recommendations on the engineering properties of all soils subjected to loading condition;

viii. Recommendations for the protection of existing structures/utilities and adjacent property from settlement, mud waving, movement, etc.;

ix. Analysis of existing access roads and site ingress/egress and recommendations for any traffic control measures related to the earthwork operations;

x. Recommendations for dust control and street sweeping/road maintenance;

xi. Analysis of existing drainage patterns, including all upstream drainage, and recommendations for drainage during the operation and upon completion;

xii. Recommendations for soil erosion and sedimentation control; and

xiii. Recommendations for monitoring of the fill/stockpile operation, including quality control, settlement plates, inclinometers, etc.

3. All fill or excavation operations must comply with the recommendations of the approved geotechnical investigation report.

4. Under no circumstances shall fill which does not conform with the New Jersey Department of Environmental Protection—Solid Waste Management (NJDEP-SWM) definition of "clean fill" be utilized. Nothing in this section should be construed to allow the filling of wetlands without the required approvals of the governmental authorities with jurisdiction.

5. A copy of a Soil Erosion Plan permit which has been issued by the governing Soil Conservation District shall be submitted to the Office of the Chief Engineer prior to the start of earthwork operations.

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

Proposed Amendment: N.J.A.C. 19:4-6.28

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Authority: N.J.A.C. 13:17-1 et seq., specifically 13:17-6(i) and 19:4-6.27.

Proposal Number: PRN 1989-568.

A **public hearing** concerning this proposed amendment will be held on November 28, 1989 at or after 10:00 A.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by December 6, 1989 to:

Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Summary

The proposed amendment to the Hackensack Meadowlands Development Commission Official Zoning Map consists of a change in zoning designation of Block 196, Lot 1, in North Arlington and Block 235, Lots 8, 9, and 12 in Lyndhurst, New Jersey from Research Distribution Park to Heavy Industrial.

Social Impact

The proposed zoning change will allow for heavy industrial development in an area which currently contains predominantly heavy industrial uses. The property is isolated from a number of adjacent uses due to topography. Traffic will be dispersed over longer periods of time rather than at the peak traffic hours as the present zoning would promote.

Economic Impact

The proposed rezoning of the subject site will permit development of the property consistent and compatible with adjacent lands. Development of this site will not cause undue hardship to the Borough of North Arlington or the Town of Lyndhurst, New Jersey.

Regulatory Flexibility Statement

The effect of this proposed amendment would be to rezone certain properties in the Borough of North Arlington and the Town of Lyndhurst. The amendment will have no impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the uses that would be permitted in the rezoned property. There being no regulation over small businesses in any other manner, no regulatory flexibility analysis is required.

19:4-6.28 Official Zoning Map

Change the zoning designation of Block 196, Lot 1 in North Arlington and Block 235, Lots 8, 9, and 12 in the Township of Lyndhurst from Research Distribution Park to Heavy Industrial, as indicated on the attached map.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Casino Licensee's Organization
Proposed Amendment: N.J.A.C. 19:45-1.11

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j) and 99.
Proposal Number: PRN 1989-561.

Submit comments by December 6, 1989 to:
Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike
CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment results from a petition for rulemaking filed by Boardwalk Regency Corporation (BRC) pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6 (see 20 N.J.R. 1002(b)). That petition also included a request to amend N.J.A.C. 19:45-1.11A and 1.12, which amendments were adopted by the Commission on February 22, 1989 (see 21 N.J.R. 780(a)).

The proposed amendment would permit a casino licensee to have its director of security report to a senior executive other than the chief executive officer. BRC had originally sought to also amend the reporting requirements for the casino manager, slot department manager and credit manager. However, BRC has since amended its petition and deleted these amendments from its request.

Social Impact

Some casino licensees may choose to alter their organizational structure as a result of this amendment by having their director of security report to an executive other than the chief executive officer. It could be argued that such a change would reduce the chief executive officer's involvement in security matters, and may also affect the independence and autonomy of the security department in carrying out its functions.

Economic Impact

The proposed amendment is not anticipated to have any significant economic impact.

Regulatory Flexibility Statement

The proposed amendment will only affect casino licensees, none of which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:45-1.11 Casino licensee's organization

(a)-(b) (No change.)

(c) Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1.-6. (No change.)

7. A security department supervised by a director of security who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Chief Executive Officer or [his equivalent] **directly to a senior corporate officer having no incompatible functions, or indirectly to the chief executive officer and directly to a senior corporate officer having no incompatible functions.** The director of security shall be responsible for the overall security of the establishment including, but not limited to, the following:

i.-ix. (No change.)

8.-9. (No change.)

(d)-(g) (No change.)

(b)

CASINO CONTROL COMMISSION

Gaming Equipment
Baccarat and Minibaccarat Tables; Physical Characteristics
Proposed Amendment: N.J.A.C. 19:46-1.12

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(c) and 70(f).
Proposal Number: PRN 1989-559.

Submit comments by December 6, 1989 to:
Deno R. Marino
Deputy Director-Operations
Casino Control Commission
CitiCenter Building-4th Floor
1300 Atlantic Avenue
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:46-1.12(c)1 would permit the Commission to authorize betting areas for the minibaccarat table layout, in shapes other than rectangular, circular, or oval.

Social Impact

The proposed amendment merely increases the possible authorized shapes of the betting areas for the minibaccarat table layout permitted by the Commission and would have no social impact of any significance.

Economic Impact

The proposed amendment merely increases the possible authorized shapes of the betting areas for the minibaccarat table layout permitted

by the Commission and would have no economic impact of any significance.

Regulatory Flexibility Statement

This proposed amendment will only affect the operation of casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

(a)-(b) (No change.)

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1. The cloth covering the minibaccarat table shall have imprinted thereon the name of the casino[,]. [and shall have rectangular, circular, or oval boxes for the wagers on the "Banker's Hand" and "Player's Hand". Such boxes shall not exceed seven in number.]

2. Unless authorized by the Commission, the minibaccarat layout shall have rectangular, circular, or oval betting areas for the wagers on the "Banker's Hand" and "Player's Hand". Such areas shall not exceed seven in number.

Recodify existing 2.-4. as **3.-5.** (No change in text.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack
Surrender and Procedure for Dealing of Cards
Proposed New Rule: N.J.A.C. 19:47-2.8
Proposed Amendment: N.J.A.C. 19:47-2.6

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69, 70(f) and 100(e).

Proposal Number: PRN 1989-560.

Submit comments by December 6, 1989 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building—4th Floor
1300 Atlantic Avenue
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 5:12-69(e), the Commission, on Decemeber 21, 1988, authorized the temporary adoption of a new surrender rule in the game of blackjack for an experimental period of 90 days to determine whether the rule should be adopted on a permanent basis. The experiment, which commenced on March 15, 1989, and ended on June 12, 1989, was conducted at The Claridge Casino Hotel. The results of the experiment revealed that the new surrender rule increased blackjack revenues and did not negatively impact on the integrity of the game of blackjack. However, due to the limited nature of the test, the long-term effect of the new surrender rule could not be determined conclusively. Therefore, the proposed rule currently under consideration is optional rather than mandatory, thereby providing each casino licensee the opportunity to discontinue its use should it prove to be detrimental.

The proposed amendment to N.J.A.C. 19:47-2.6 and proposed new rule N.J.A.C. 19:47-2.8 would permit a patron to surrender his or her original two card hand and one-half of his or her original wager only after it has been determined that the dealer does not have blackjack. If the patron elects to surrender and the dealer has drawn blackjack, the patron's entire wager will be lost. The proposed surrender rule differs from the surrender rule that was repealed in 1982 in that the repealed rule allowed a patron to relinquish half of his wager regardless of the dealer's hand.

Proposed new rule N.J.A.C. 19:47-2.8 would also require a casino licensee who offers the surrender rule to use it uniformly throughout its casino and to provide prior written notice to the Commission and the Division of Gaming Enforcement whenever initiating or discontinuing the surrender rule.

Social Impact

The results of the test indicated a favorable acceptance of the new surrender rule by blackjack players. It is anticipated that the surrender rule will add more variety to the game of blackjack by providing patrons with the opportunity to discontinue their hand after receiving their first two cards, provided the dealer does not have blackjack.

Economic Impact

The surrender rule had a beneficial economic impact on the casino licensee during the experimental period. However, the long-term economic impact on a casino licensee is difficult to determine given the short duration of the experiment. The surrender option may benefit individual patrons since it will allow patrons the opportunity to surrender half of their wager and thereby afford them the opportunity to "cut their losses".

Regulatory Flexibility Statement

The proposed amendment and new rule will only affect the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface **thus**).

19:47-2.6 Procedure for dealing cards

(a)-(e) (No change.)

(f) After two cards have been dealt to each player and the appropriate number to the dealer, the dealer shall, beginning from his left, announce the point total of each player. As each player's point total is announced, such player shall indicate whether he wishes to **surrender,** double down, split pairs, stand, draw and/or make an insurance wager, as provided for by this chapter.

(g)-(n) (No change.)

19:47-2.8 Surrender

(a) After the first two cards are dealt to the player and the player's point total is announced, the player may elect to discontinue play on his hand for that round by surrendering one-half his wager. All decisions to surrender shall be made prior to such player indicating as to whether he wishes to double down, split pairs, stand, and/or draw as provided for in this subchapter.

1. Should the first card dealt to the dealer be other than an ace or 10-value card, the dealer shall immediately collect one-half of the wager and return one-half to the player.

2. Should the first card dealt to the dealer be an ace or 10-value card, the dealer will place the player's wager on top of the player's cards. When the dealer's second card is revealed, the hand will be settled by immediately collecting the entire wager should the dealer have blackjack or collecting one-half of the wager and returning one-half of the wager to the player should the dealer not have blackjack.

(b) If the player has made an insurance wager and then elects to surrender, each wager will be settled separately as provided for above and in accordance with N.J.A.C. 19:47-2.9 and one will have no bearing on the other.

(c) Each casino licensee may, at its discretion, offer its patrons the surrender option authorized in this section. If a casino licensee elects to offer the surrender option, it shall be made available to all players at all blackjack tables. A casino licensee may, upon prior written notice to the Commission and the Division, initiate the use of the surrender option at the start of any gaming day or terminate its use at the end of any gaming day. Any casino licensee offering the surrender option shall post a sign, as approved by the Commission, on each blackjack table in its casino.

RULE ADOPTIONS

BANKING

(a)

CONSUMER CREDIT BUREAU

Notice of Administrative Correction
Check Cashers; Corporate Applications
N.J.A.C. 3:24-1.2

Take notice that the Department of Banking has discovered an error in the text of N.J.A.C. 3:24-1.2 as adopted in the September 18, 1989 New Jersey Register at 21 N.J.R. 2956(a). The word "field" in subsection (a) is a typographical error; the correct word is "filed". This notice is published in accordance with N.J.A.C. 1:30-2.7(a)1.

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:24-1.2 Corporate applications

(a) Corporate applicants shall submit a copy of certificate of incorporation showing the [field] **filed** or recording stamp of the Secretary of State, and shall indicate the registered agent for service of process. Foreign corporations shall submit a Certificate of Authority in addition to corporate certificate.

(b)-(c) (No change.)

PERSONNEL

(b)

MERIT SYSTEM BOARD

Separations and Demotions; Public Records; Delegation: Interim Relief; Major Discipline; Minor Discipline and Grievances; Examinations; Working Test Periods; Examination and Selection Disqualification and Appeals; Relocation Assistance; Failure to Appoint from Complete Certification

Adopted Repeals: N.J.A.C. 4:1-16.6, 4:1-16.15, 4:1-25.1, 4:2-16.6, 4:2-16.8 and 4A:4-6.5
Adopted Amendments: N.J.A.C. 4A:1-4.1, 4A:2-1.2, 4A:2-1.4, 4A:2-2.5, 4A:2-2.7, 4A:2-3.1, 4A:2-3.7, 4A:4-2.3, 4A:4-2.9, 4A:4-2.15, 4A:4-5.2, 4A:4-6.3, 4A:4-6.4, 4A:4-6.6, 4A:4-7.3 and 4A:10-2.2
Adopted New Rule: N.J.A.C. 4A:4-6.5

Proposed: July 3, 1989 at 21 N.J.R. 1766(a).

Adopted: October 3, 1989 by the Merit System Board, Charles A. Nanry, Ph.D., Acting Commissioner, Department of Personnel.

Filed: October 16, 1989 as R.1989 d.569, **without change.**

Authority: N.J.S.A. 11A:2-6(c) and (d), 11A:2-11(e), 11A:2-12, 11A:2-13, 11A:2-20, 11A:2-21, 11A:4-1, 11A:4-5, 11A:4-15, 11A:4-16, 11A:10-3, 40A:14-45 and 40A:14-127.1.

Effective Date: November 6, 1989.

Expiration Date: October 5, 1992, N.J.A.C. 4A:1; October 5, 1992, N.J.A.C. 4A:2; November 2, 1992, N.J.A.C. 4A:10; June 6, 1993, N.J.A.C. 4A:4.

Summary of Public Comments and Agency Responses:

A public hearing was held on July 20, 1989 to provide interested parties the opportunity to present testimony. The comment period closed on August 2, 1989. The only comments received were from an attorney for Camden Council No. 10, and are summarized and responded to below.

COMMENT: Department of Personnel responsibilities should not be delegated to an appointing authority, as provided in N.J.A.C. 4A:1-4.1, because of a potential for abuse by an appointing authority.

RESPONSE: N.J.S.A. 11A:2-12 provides for delegation by the Commissioner of Personnel to the appointing authority of certain responsibilities such as classification, examination administration and other technical personnel functions. An audit unit established two years ago ensures that delegation procedures are properly conducted. The Merit System Board believes that the rule and amendments are consistent with the statute.

COMMENT: Support was expressed for the amendment to N.J.A.C. 4A:2-2.5, which gives employees the opportunity to complain of violations of this rule section through a petition for interim relief. However, a time table for rulings on such petitions should be included in the amendment to ensure expeditious resolution.

RESPONSE: The Merit System Board agrees that petitions for interim relief should be decided expeditiously, but believes that there is no demonstrated need at this time to change the rule on interim relief (N.J.A.C. 4A:2-1.2) to include timetables. If a specific problem is identified in the future, the Board will review the need for a rule change.

COMMENT: Support was expressed for the amendment to N.J.A.C. 4A:2-2.7(a)1, which specifies the standard for determining whether an employee who is charged with a criminal complaint or who is under indictment need be immediately suspended at the commencement of a major disciplinary process.

COMMENT: A 12-month working test period for juvenile detention officers, provided for in N.J.A.C. 4A:4-5.2(d), is not necessary and should remain three months long. Juvenile detention officers should receive a permanent appointment after the completion of the training course now required by law and satisfactory completion of a three-month working test period.

The proposed amendment to paragraph (d)1, which applies major disciplinary procedures to law enforcement officers from the time of appointment through police training, does not clearly state whether juvenile detention officers are also considered law enforcement officers. If so, and a 12-month working test period is required, then they should receive the same procedural protections in a major disciplinary action that law enforcement officers will receive according to paragraph (d)1.

RESPONSE: N.J.S.A. 52:17B-68.1(b) requires that a person who is appointed as a juvenile detention officer will be given a one year probationary period, during which time the person must complete a basic training course. Therefore, the Board is not free to modify this statutory directive. Major disciplinary procedures are applicable to all persons serving their working test period. The Board believes that a change in the rule is not needed since the law is clear that a juvenile detention officer would begin his or her working test period upon appointment.

COMMENT: An eligible should receive copies of all material which the appointing authority submits to the Department of Personnel, according to N.J.A.C. 4A:4-6.5(a)1, in support of its request to have the eligible's name removed from a list for medical or psychological reasons. The eligible must know the basis for the removal request when he or she is given the opportunity to appeal pursuant to subsection (b). In addition, paragraph (c)1 should be amended to require the appointing authority to provide the Department of Personnel with proof of service of medical information to the appellant.

RESPONSE: The Board strongly agrees with the concept that an appellant should have a full opportunity to review the reasons for a request for removal of the appellant's name from an eligible list. The only issue is the time when such material is to be provided. The language in N.J.A.C. 4A:4-6.5(a)1 comports with current practice, which is that all medical, psychological and/or psychiatric reports which form the basis for a removal request are furnished to an eligible by the appointing authority when the eligible appeals the removal request. Under this procedure, materials need not be sent to those who do not choose to appeal. Moreover, eligibles do not need to review documentation that has been identified by the Department of Personnel, under subsection (b), as incomplete or unsatisfactory. The procedure ensures that the eligible receives all pertinent documentation at one time and is given ample opportunity to respond to all the information in a comprehensive rather than piecemeal fashion.

The Board also agrees with the importance of ensuring that the appointing authority provide this documentation to the appellant. However, the Board is not persuaded that the commenter's suggested amendment to paragraph (c)1, to require that the appointing authority provide proof

of service of all information to the eligible, is necessary at this time. Appeal procedures for other matters, such as sick leave injury benefits for State employees and list removal requests because of an eligible's unsatisfactory employment or criminal record, simply require that each party supply the other with all materials submitted to the Merit System Board. Informal measures ensure that the requirement is followed. If a pattern of violations is demonstrated, however, the Board will consider appropriate changes to the rule.

Full text of the adoption follows.

4A:1-4.1 Delegation to appointing authorities

(a)-(e) (No change.)

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial and identifiable costs. Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials and facilities after offset by savings effected by the delegation.

(g) (No change.)

4A:2-1.2 Stay and interim relief requests

(a) (No change.)

(b) A request for a stay or interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) (No change.)

(d) The filing of a petition for interim relief will not stay administrative proceedings or processes.

(e) (No change.)

(f) Following a final administrative decision by the Commissioner or the Board, and upon the filing of an appeal from that decision to the Appellate Division of Superior Court, a party to the appeal may petition the Commissioner for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above. See N.J. Court Rules 2:9-7.

(g) See N.J.A.C. 1:1-12.6 for interim relief rules on matters pending before the Office of Administrative Law.

4A:2-1.4 Burden of proof

(a) (No change.)

(b) In appeals concerning minor disciplinary actions, see N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

(c) (No change.)

4A:2-2.5 Opportunity for hearing before the appointing authority

(a)-(d) (No change.)

(e) Appeals concerning violations of this section may be presented to the Commissioner through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.

2.-3. (No change.)

(b)-(c) (No change.)

4A:2-3.1 General provisions

(a)-(b) (No change.)

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

(d)-(g) (No change in text.)

4A:2-3.7 Appeals from appointing authority decisions: State service

(a)-(e) (No change.)

(f) In Commissioner or Board reviews, the employee shall present issues of general applicability in the interpretation of law, rule or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.

2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

4A:4-2.3 Open competitive examinations

(a) (No change.)

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. (No change.)

2. Meet all requirements specified in the examination announcement:

i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former Municipal Police Officers 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former Municipal Police Officers who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.

ii. (No change.)

3. (No change.)

(c) (No change.)

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for police and fire promotional examinations under (b) below, may be authorized for the following reasons:

1.-6. (No change.)

(b) For police and fire promotional examinations, make-up examinations may be authorized only in cases of documented job-related emergency or job-related medical disability, verified by the appointing authority.

(c)-(h) (No change in text.)

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Department of Personnel.

2. Ties in final earned ratings shall not be broken.

(b)-(c) (No change.)

(d) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 90 percent to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10 point maximum.

4A:4-5.2 Duration

(a)-(c) (No change.)

(d) Persons appointed to entry level law enforcement, correction officer, juvenile detention officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers.

1. In local service, law enforcement officers who are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training

course. However, major disciplinary procedures applicable to employees serving in a working test period (see N.J.A.C. 4A:2-2) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.

i. (No change.)

2. (No change.)

(e) An approved leave of absence shall extend the completion of the working test period for a period of time equal to that leave.

1. A paid leave of absence for a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1 shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one year period.

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring and administration (see N.J.A.C. 4A:4-6.4);

2.-3. (No change.)

(b)-(f) (No change.)

4A:4-6.4 Review of examination items, scoring and administration

(a)-(b) (No change.)

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing for a period of five business days beginning on the second business day after the examination has been held.

(d)-(i) (No change in text.)

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish a copy of the certification and a report and recommendation, prepared and signed by a New Jersey licensed physician, psychologist or psychiatrist, to the Department of Personnel to support the removal request. The submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (e) below for report requirements.

2. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. He or she has been disqualified for appointment;

2. He or she may file an appeal with the Merit System Board within 20 days of such notification;

3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and

4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(c) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Merit System Board, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request.

1. The appointing authority shall also furnish the appellant with all of the information supplied to the Merit System Board.

2. In those limited circumstances when the examining physician, psychologist or psychiatrist certifies that such disclosure would be injurious to the appellant's health, and provides a basis specific to the diagnosis of that appellant, the information shall not be provided to the appellant but shall be provided by the appointing authority to the appellant's attorney or doctor.

3. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

(d) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See (e) below for report requirements.

(e) The Merit System Board may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1. The professional's signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;

2. The length of the examination or interview;

3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;

4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and

5. All tests that have been administered (for example, EKG, EEK, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

(f) The Merit System Board shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations or other materials.

1. When submitted to the Review Panel or Examiners Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to a Panel.

2. If no appearance is requested, the appeal will be reviewed by the Panel upon the written record.

3. The Panel shall prepare a written report and recommendation for the Merit System Board.

i. The appellant and appointing authority shall be provided with copies of the report and recommendation.

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(g) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1.-3. (No change.)

(b)-(d) (No change.)

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocation assistance for employees who are transferred or reassigned on a permanent basis to a new work location due to either a closing or phasedown in anticipation of closing of a State operation.

1.-2. (No change.)

(b)-(c) (No change.)

4A:10-2.2 Failure to appoint from complete certification

(a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

1. When an appointing authority has notified the Department of Personnel either by the date of the examination or within 30 days after the initial date of the examination announcement, whichever date is earlier, that it has vacated the position and terminated the provisional appointee, the Commissioner may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action.

2. Following the period set forth in (a)1 above, an appointing authority may, for valid reasons such as fiscal constraints, petition the Commissioner for permission not to make a permanent appointment. The Commissioner may grant such petition, but may order the appointing authority to reimburse the Department for the costs of the selection process. The Commissioner shall notify the appointing authority of the amount of the reimbursement and an opportunity to respond to the assessment within 20 days of such notice.

(b) (No change.)

(a)

MERIT SYSTEM BOARD

Compensation; Promotional Examinations; Eligible Lists; Sick Leave; Rule Violations

Adopted New Rule: N.J.A.C. 4A:3-4.17

Adopted Amendments: N.J.A.C. 4A:3-4.21, 4A:4-2.1, 4A:4-2.15, 4A:4-3.4, 4A:4-5.5, 4A:6-1.5 and 4A:10-1.1

Proposed: August 21, 1989 at 21 N.J.R. 2429(a).

Adopted: October 13, 1989 by the Merit System Board, Charles A. Nanry, Ph.D., Acting Commissioner, Department of Personnel.

Filed: October 16, 1989 as R.1989 d.570, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:2-6(d), 11A:3-7, 11A:4-1, 11A:4-6, 11A:6-5, 11A:6-7 and 11A:10-3.

Effective Date: November 6, 1989.

Expiration Date: September 6, 1993, N.J.A.C. 4A:3
June 6, 1993, N.J.A.C. 4A:4
January 4, 1993, N.J.A.C. 4A:6
November 2, 1992, N.J.A.C. 4A:10.

Summary of Public Comments and Agency Responses:

COMMENT: The Director of Human Resources for the Department of Transportation expressed support for N.J.A.C. 4A:3-4.17, which concerns the calculation of salaries and anniversary dates when an employee is appointed from a special reemployment list. However, she suggested that existing rules on the calculation of anniversary dates and salaries in demotional situations be consistent with the new rule.

RESPONSE: This rule is intended to provide the most favorable salary adjustment to persons who had encountered a layoff situation. Thus the rule correctly limits its application to such persons.

COMMENT: A representative of the International Federation of Professional and Technical Engineers (IFPTE) Local 195 expressed agreement with the amendment to N.J.A.C. 4A:3-4.21(a), which clarifies that the Commissioner of Personnel would consider all of the factors listed to determine whether an employee need repay a salary overpayment or have the repayment adjusted.

COMMENT: An attorney for Camden Council No. 10, the Director of Human Resources for the Department of Transportation and a representative of IFPTE Local 195 noted their support for the amendment to N.J.A.C. 4A:4-2.1 which provides for the reannouncement of a promotional examination if, within a year after the closing date, the examination has not yet been constructed and scheduled.

The Director of Personnel for the Department of Environmental Protection and a representative of the Communications Workers of America (CWA) Local 1033 opposed the amendment, stating that it would unfairly create more competition for candidates who were eligible for the examination the first time it was announced and cause further delay in the examination process. The CWA representative also stated that the amendment conflicts with N.J.S.A. 11A:4-13(b), which limits provisional appointments to 12 months, but that the amendment would be less objectionable if it were changed to apply only to promotional examinations which have not been triggered by a provisional appointment.

RESPONSE: The Merit System Board is advised that the rule amendment will affect a very limited number of examination situations. Where there has been a delay of a year or more, the Board believes it is fair to accept other qualified applicants.

COMMENT: A representative of IFPTE Local 195, an attorney for Camden Council No. 10, the Director of Human Resources for the Department of Transportation and a representative of CWA Local 1033 noted their support for the amendment to N.J.A.C. 4A:4-2.15(c), which prohibits the use of performance ratings in a promotional examination when both the performance rater and ratee are competing in that examination. However, the attorney for Camden Council No. 10 voiced her organization's standing objection to the use of any performance rating in the promotional examination process. The CWA representative stated that the amendment should go further by prohibiting the use of performance ratings in promotional examinations for other reasons, such as when some candidates have not received performance ratings for years.

RESPONSE: The use of performance ratings in promotional examinations has been limited to State service and is a long standing process. Where there are problems with the use of ratings in a particular examination, the Department of Personnel will review such matters.

COMMENT: An attorney for Camden Council No. 10, the Director of Human Resources for the Department of Transportation and a representative of IFPTE Local 195 expressed their support for the amendments to N.J.A.C. 4A:4-3.4 and 4A:4-5.5.

COMMENT: The Director of Personnel for the Department of Environmental Protection, the Director of Human Resources for the Department of Transportation, a representative of IFPTE Local 195 and the Acting Personnel Officer for the Department of the Public Advocate favored the adoption of Option A for the amendment to N.J.A.C. 4A:6-1.5. A representative of CWA Local 1033 suggested that Option A be adopted for employees whose workweeks change from 35 to 40 hours, and that Option B be adopted for employees whose workweeks change from 40 to 35 hours.

RESPONSE: The Board has decided to adopt option A, in view of the strong support for that option. To have one method applied to conversions from 35 to 40 hour workweeks, and another method for conversions from 40 to 35 hour workweeks, would not allow for a uniform system.

COMMENT: A representative of IFPTE Local 195 and the Director of Human Resources for the Department of Transportation expressed support for the amendment to N.J.A.C. 4A:10-1.1, which mandates that appointing authorities timely supply all information requested by the Department of Personnel for the efficient and accurate administration of the merit system.

Full text of the adoption follows (deletions indicated in brackets with asterisks *[thus]*).

4A:3-4.17 Salaries and anniversary dates for employees appointed from a special reemployment list: State service

(a) The salary of an employee appointed from a special reemployment list shall be determined as follows:

1. When appointed to the same title held at the time of the reduction in force, the employee shall receive the same step of the salary range received on the date of the layoff.

2. When appointed to a different title from the one held at the time of the reduction in force, the employee shall receive the most beneficial to the employee of the following:

i. The same step and salary range that he or she would have received if appointed to the new title on the date of the reduction in force; or

ii. When the employee is currently serving in another title, the salary determined by adjustment to the new title:

(1) When appointed to a new title with the same class code, make a lateral pay adjustment, N.J.A.C. 4A:3-4.8;

(2) When appointed to a new title with a higher class code, make an advancement pay adjustment, N.J.A.C. 4A:3-4.9; or

(3) When appointed to a new title with a lower class code, make a demotional pay adjustment, N.J.A.C. 4A:3-4.1.

EXAMPLE: An employee was demoted in lieu of layoff in October, 1988 from Secretarial Assistant II (Range A17, 35 hour workweek) to Principal Clerk (Range R11, 35 hour workweek). At the time of the reduction in force, the employee was at step three of range A17 or $22,328. In accordance with N.J.A.C. 4A:3-4.10(c), which governs non-disciplinary demotions, the salary in the Principal Clerk title was set at step nine of range R11, or $21,229. Five months later and before the employee's anniversary date, the employee was appointed from a special reemployment list to the title of Principal Clerk Typist (Range R12, 35 hour workweek). Two calculations are made: (1) Using (a)2i above, if the employee had been demoted to Principal Clerk Typist at the time of layoff, the application of N.J.A.C. 4A:3-4.10(c) would have placed the employee at step eight of range R12, or $21,492. (2) Using (a)2ii above, advancement from Principal Clerk to Principal Clerk Typist would be governed by N.J.A.C. 4A:3-4.9(b) and would place the employee at step nine of range R12, or $22,286. Since the second option is more beneficial to the employee, (a)2ii above is followed.

(b) The anniversary date of an employee appointed from a special reemployment list shall be determined as follows:

1. When using (a)1 or (a)2i above to determine salary, reconstruct the employee's anniversary date to the date of the reduction in force, then calculate the additional number of pay periods needed to meet the requirements for a performance increment. Assign the anniversary date which will include the additional number of pay periods of service needed to satisfy anniversary date requirements.

2. When using (a)2ii above to determine salary, follow the provisions for either a lateral pay adjustment (N.J.A.C. 4A:3-4.8), advancement pay adjustment (N.J.A.C. 4A:3-4.9) or demotional pay adjustment (N.J.A.C. 4A:3-4.10) as applicable.

3. If at the time of the reduction in force the employee was at the maximum salary step for the title from which displaced, assign the anniversary date that reflects the length of time that the employee had been at the maximum step on the date of the reduction in force.

EXAMPLE: An employee is reappointed from a special reemployment list on March 26, 1988 (pay period 8/88) to the permanent title from which the employee was laid off on January 15, 1988 (pay period 3/88). At the time of the layoff, the employee was receiving the ninth step of the salary range with an anniversary date of 1/88. When reappointed, the employee will receive an anniversary date of 6/88 to show that the employee had been at the maximum step of the salary range for two pay periods.

(c) The salary and anniversary date for an employee who is appointed to a title that was reevaluated after the date of the reduction in force shall be determined by calculating the salary and anniversary date by (a)1 and (b)1 above, using the title's former salary range. See N.J.A.C. 4A:3-4.9 and 4A:3-4.11.

(d) This section shall not be used to obtain a salary greater than that the employee would have received in the absence of a reduction in force.

4A:3-4.21 Salary overpayments: State service

(a) The Commissioner may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;

2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;

3. The terms of the repayment schedule would result in economic hardship to the employee.

(b) (No change.)

4A:4-2.1 Announcements and applications

(a)-(c) (No change.)

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

Recodify (d)-(g) as (e)-(h) (No change in text.)

4A:4-2.15 Rating of examinations

(a)-(b) (No change.)

(c) The Commissioner shall set procedures for the evaluation of seniority and performance ratings in promotional examinations.

1. Performance ratings shall not be used as a factor in promotions when the supervisor who completes a performance rating for a subordinate competes in the same promotional examination as the subordinate.

4A:4-3.4 Revival of eligible lists

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1.-2. (No change.)

3. To correct an administrative error;

4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or

5. For other good cause.

4A:4-5.5 Restoration to eligible list or former title

(a) (No change.)

(b) An employee who is laid off during the working test period shall be restored to the eligible list from which he or she was appointed.

(c) (No change in text.)

[OPTION "A"]

4A:6-1.5 Vacation and sick leave adjustments: State service

(a)-(e) (No change.)

(f) In State service, when an employee's workweek changes while he or she is employed by an appointing authority which tracks and grants sick leave in hours, the employee's sick leave entitlement shall be recalculated in the following manner:

1. The number of hours of sick leave for the former workweek shall be converted into days by dividing by the number of hours in the former workweek workday; and

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1, 1989, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the 1989 (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Her new sick leave entitlement is computed by dividing 350 by seven, the number of hours in a 35 hour workweek workday, to yield the result of 50 days of sick leave. The 50 days are then multiplied by eight, the number of hours in a 40 hour workweek workday. Thus, Mary Smith's converted sick leave hours are 400.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for 1989 (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. His new sick leave entitlement is computed by dividing 350 by eight, the number of hours in a 40 hour workweek workday, to yield the result of 43.75 days of sick leave. The 43.75 days are then multiplied by seven, the number of hours in a 35 hour workweek workday. Thus, Thomas Brown's converted sick leave hours are 306 (43.75 x 7 = 306.25, rounded to 306).

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.

*[OPTION "B"

4A:6-1.5 Vacation and sick leave adjustments: State service

(a)-(e) (No change.)

(f) In State service, when an employee's workweek changes while he or she is employed by an appointing authority which tracks and grants sick leave in hours, the employee's sick leave entitlement shall be recalculated in the following manner:

1. The number of hours of sick leave for the current year which have been credited, but not earned, as of the date of the change shall be converted into days by dividing by the number of hours in the former workweek workday.

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

3. The hours of sick leave accumulated from prior years and the hours of sick leave earned during the current year as of the date of the change shall not be converted.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1, 1989, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the 1989 (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Due to the change in workweek, the 1989 credit is converted. For the first four months, she has earned 35 hours (1/3 x 105 hours). For the remainder of the year, a yearly rate of 120 hours (15 days x 8 hours) is utilized, and her credit for this period is 80 hours (2/3 x 120 hours). The hours not converted are those accumulated from prior years (245) and those earned during the current year as of May 1 (35). Adding the converted and non-coverted hours, Mary Smith's sick leave entitlement as of May 1 is 360 hours.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for 1989 (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. Due to the change in workweek, the 1989 credit is converted. For the first four months, he has earned 40 hours (1/3 x 120 hours). For the remainder of the year, a yearly rate of 105 hours (15 days x 7 hours) is utilized, and his credit for this period is 70 hours (2/3 x 105 hours). The hours not converted are those accumulated from prior years (230) and those earned during the current year as of May 1 (40). Adding the converted to the non-converted hours, Thomas Brown's sick leave entitlement as of May 1 is 340 hours.

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.]*

4A:10-1.1 General provisions

(a)-(e) (No change.)

(f) Appointing authorities shall timely supply all information, documents and other materials requested by the Department of Personnel for the purpose of efficiently and accurately administering the merit system.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code; Fire Code Enforcement Fire Safety Code

Adopted Amendments: N.J.A.C. 5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11 and 4.13; 5:18A-3.3

Proposed: August 21, 1989 at 21 N.J.R. 2431(a).

Adopted: October 10, 1989 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: October 13, 1989 as R.1989 d.556, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.4).

Authority: N.J.S.A. 52:27D-198.

Effective Date: November 6, 1989.

Expiration Date: February 1, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from the Prudential Insurance Company of America, the New Jersey Association of Health Care Facilities, the New Jersey Builders Association, the New Jersey Business and Industry Association, the Elevator Safety Inspectors Association of New Jersey, the National Automatic Sprinklers Association, and the owner of a guest house in Cape May.

COMMENT: Prudential Insurance expresses its support for the proposed amendments but recommends that provision be made for the granting of extensions of time in cases where an owner is making a good-faith effort to abate violations but cannot meet a deadline for compliance that is set in the rules.

RESPONSE: The Department points out that N.J.A.C. 5:18-2.10(c) already contains adequate provision for the granting of extensions.

COMMENT: The New Jersey Association of Health Care Facilities finds it to be unclear why certain types of facilities (for example, "homes for the aged") are classified in Use Group I-1 while others that appear to be similar (for example, "homes for aged and infirm") are in Use Group I-2.

RESPONSE: The answer is that the definitions make a distinction between I-1 facilities, in which residents must live in a supervised environment but are physically capable of responding to an emergency situation without personal assistance, and I-2 facilities, in which the residents do not have that physical capability. Whether people are physically able to get out of a building without personal assistance in the event of a fire is of utmost relevance in determining appropriate fire code requirements. The Association is also concerned about what it perceives as new requirements for I-2 facilities, including residential health care facilities. However, the rules governing protection of interior stairways in I-2 facilities are already in effect (N.J.A.C. 5:18-4.13(c)7.) and are not affected by the proposed amendments.

COMMENT: The New Jersey Builders Association is concerned about requirements that exceed the requirements of the BOCA National Building Code, the building subcode of the State Uniform Construction Code. Special note is made of exception from suppression requirements for residential buildings under five stories that have supervised fire alarm systems.

RESPONSE: The Department points out that any building that conforms in all respects to the requirements of the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.) is automatically exempt from the Uniform Fire Code pursuant to N.J.S.A. 52:27D-213a. For buildings not fully in compliance with the Uniform Construction Code, higher Uniform Fire Code standards may be needed in some respects in order to compensate for the absence of other protective safeguards required by the Uniform Construction Code.

COMMENT: The Builders Association also suggests that it would be consistent with the Department's intent to regard interior stairways as subject to N.J.A.C. 5:18-4.13(c), which deals with stairways connecting no more than three levels, rather than subsections (a) or (b), which are already in effect and which deal with stairways connecting more than three levels, if there is a 30-minute fire barrier at every third level.

RESPONSE: This is not the Department's intent and a change in the language would therefore not be appropriate.

COMMENT: The Builders Association further states that the cost will be greater than the Department estimated and that a building with an automatic fire alarm system and otherwise in conformity with the Fire Safety Code and the Hotel and Multiple Dwelling regulations (N.J.A.C. 5:10) should not be held to the proposed fire barrier requirements.

RESPONSE: The Department states that smoke alarms, while of proven value in alerting people and thereby saving lives, are not a substitute for fire barriers or suppression systems that can actually stop the spread of smoke or fire.

COMMENT: The New Jersey Business and Industry Association is concerned that the cost of installing fire barriers in many buildings will be higher than the Department estimated. It suggests that longer phase-in periods be allowed where this is the case.

RESPONSE: As previously indicated, the rules already make provision for the granting of extensions where warranted.

COMMENT: The Business and Industry Association also points out that telephone exchange facilities "have traditionally enjoyed exemption from fire suppression requirements" and requests a definitive statement from the Department as to whether these windowless facilities are to be exempt from the requirements of N.J.A.C. 5:18-4.7.

RESPONSE: The Department does not consider these facilities to be exempt from the suppression requirements for windowless stories. In the first place, the owners of such facilities may have the option of providing access from the exterior for firefighters and thereby making the areas cease to be windowless. Aside from the fact that it should be possible to protect equipment from water damage, the Department believes that its first concern must be the protection of the lives of people in the building and of firefighters and equipment damage and possible temporary loss of telephone service are small prices to pay if lives can be saved.

COMMENT: The Elevator Safety Inspectors Association of New Jersey is concerned that Uniform Fire Code rules might be read as requiring installation of fire suppression systems around elevator equipment in a way that would violate the State Uniform Construction Code.

RESPONSE: N.J.A.C. 5:18-4.7(h) clearly provides that fire suppression systems shall be installed in accordance with the Uniform Construction Code. If current Uniform Construction Code requirements are in any way inadequate, that is an issue that must be addressed through the review processes of the respective national model code organizations.

COMMENT: The Association is particularly concerned about the use of elevator keys.

RESPONSE: This is not part of the present proposal and is a construction code issue that must be addressed in the manner that has been indicated.

COMMENT: The National Automatic Sprinklers Association objects to the exclusion of windowless areas above the seventh story from the fire suppression requirement and to allowing sprinklers to be connected to the regular water supply in basements under 10,000 square feet.

RESPONSE: The requested changes cannot be made in an adoption since they would substantially increase the burden that would be placed on affected property owners. However, the Department does see merit in the comment about not excluding windowless areas above the seventh story and intends to propose a further amendment on this subject.

COMMENT: The Cape May guest house owner recommends adding to the definition of "guest house" requirements that the building retain the essential architectural character of a private residence and be maintained in a good state of repair as defined by the BOCA property maintenance code.

RESPONSE: The Department regards the first of these criteria as too subjective for a definition and the latter as inappropriate since a definition should not vary with the current state of maintenance.

COMMENT: The guest house owner recommends that the maximum permitted occupancy for a property qualifying as a guest house be raised from 15 to 25.

RESPONSE: The Department intends the guest house category to apply only to buildings that truly resemble private homes and that very few private homes house over 15 people. Furthermore, the proposed amendment to N.J.A.C. 5:18-4.13 already gives hotels with fewer than 25 permitted occupants the same exemption as guest houses from the requirement to enclose stairways, provided there are windows in the rooms with a sill height not exceeding 44 inches (for ease of exit in case of fire) and every room above the second floor has access to a secondary exit.

COMMENT: The guest house owner further asks that owners be allowed to live in a nearby dwelling and still have the hotel qualify as a "guest house."

RESPONSE: The Department replies that variances may be gotten from the fire official where appropriate, but that, as a general rule, a person is most likely to take maximum precautions in a building in which he and his family reside and the presence of the owner is therefore a factor promoting fire safety.

COMMENT: The guest house owner goes on to recommend that the required common areas be defined to include all areas accessible to guests (including hallways, etc.) and that the minimum area be raised to 400 square feet.

RESPONSE: The Department is satisfied that requiring 300 square feet and limiting it to parlors, dining rooms, libraries, solariums and the like is more in accord with what is intended, namely areas in which people would sit together, not just pass through.

COMMENT: The guest house owner would also ban smoking and cooking in common areas and not just in guest rooms.

RESPONSE: This recommendation would impose a requirement that substantially exceeds the proposal and, therefore, cannot be added on adoption.

COMMENT: The guest house owner is otherwise pleased that the Department has seen fit to have less restrictive requirements for qualified guest houses that have automatic smoke detection systems and he finds smoke detectors to be the most appropriate fire safety option for historic interiors.

Summary of Changes Upon Adoption:

The Department has changed time references related to the effective date of these amendments to appropriate dates definite.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

5:18-1.4 Applicability

(a)-(c) (No change.)

(d) All regulations, other than this Code, promulgated by any State agency with regard to fire safety in existing buildings, structures and premises subject to this Code shall, to the extent of any inconsistency with this Code, be deemed to have been superseded by this Code.

1. Regulations determined by the Department of Community Affairs to be affected by this subsection include the following:

i. N.J.A.C. 5:10-25;
ii. N.J.A.C. 5:27-5;
iii. N.J.A.C. 5:23-2.23(i)7 and 9;
iv. N.J.A.C. 8:43-3;
v. N.J.A.C. 8:43A-15.2(b) and (c);
vi. N.J.A.C. 8:43B-3.2;
vii. N.J.A.C. 8:39-41.3 and 41.4;
viii. N.J.A.C. 8:42A-23.7;
ix. N.J.A.C. 10:44A-6.1(e) through (w);
x. N.J.A.C. 10:44B-6.2;
xi. N.J.A.C. 10A:31-3.1(b)1-3 and 11-13;
xii. N.J.A.C. 10A:32-4.4 and 4.5;
xiii. N.J.A.C. 10A:34-2.13;

xiv. N.J.A.C. 12:100-4.2(a)10 (incorporating Subparts E, L and S of 29 C.F.R. Part 1910);
xv. N.J.A.C. 12:90; and
xvi. N.J.A.C. 12-200.
2. The enumeration of certain regulations in (d)1 above shall not be construed as limiting the applicability of this subsection.
(e)-(g) (No change.)

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found within the Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

. . .

"Guest house" means a facility providing sleeping or dwelling accommodations to transient guests which:

1. Is comprised of a structure originally constructed for the purposes of a private residence;
2. Includes individual sleeping accommodations for 15 or fewer guests;
3. Has at least one dwelling unit occupied by the owner of the facility as his place of residence during any time that the facility is being used for the lodging of guests;
4. Has not less than 300 square feet of common area for the exclusive use of the guests, including, but not limited to, parlors, dining rooms, libraries and solariums;
5. Prohibits cooking and smoking in guest rooms;
6. Does not serve food to the general public on the premises;
7. Is not a "rooming house" or "boarding house" as defined in N.J.A.C. 55:13B-3; and
8. Does not allow any guest to remain more than 30 successive days or more than 30 days of any period of 60 successive days.

. . .

"K-12 educational building" means an educational building serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.

. . .

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, which is used for human purpose or occupancy which use would subject it to the provisions of this Code if it were a building or premises.

1. "Use Group A-1-A": This Use Group shall include all theaters and other buildings used primarily for theatrical or operatic performances and exhibitions, arranged with a raised stage, proscenium curtain, fixed or portable scenery loft, lights, motion picture booth, mechanical appliances or other theatrical accessories and equipment, and provided with fixed seats.
2. "Use Group A-1-B": This Use Group shall include all theaters without a stage and equipped with fixed seats used for motion picture performances.
3. "Use Group A-2": This Use Group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs as defined in N.J.A.C. 5:18-1.5, and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.
4. "Use Group A-3": This Use Group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals.
5. "Use Group A-4": This Use Group shall include all buildings used as churches and for similar religious purposes.
6. "Use Group A-5": This Use Group shall include grandstands, bleachers, coliseums, stadiums, tents and similar structures for outdoor assembly uses.
7. "Use Group B": All buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes.
8. "Use Group E": This Use Group shall include all buildings and structures serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.
9. "Use Group F": All buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F; including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials.
10. "Use Group H": All buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials.
11. "Use Group I-1": This Use Group shall include buildings housing six or more individuals who, because of age, mental instability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Included in this group are uses such as facilities for children, aged persons, mentally impaired and convalescents including: convalescent facilities, group homes, boarding houses, homes for the aged, mentally retarded care facilities, nursing homes (ambulatory), orphanages and residential care facilities. Occupancies such as the above with five or less occupants shall be classified as a residential Use Group.
12. "Use Group I-2": This Use Group shall include all buildings used for housing people suffering from physical limitations because of health or age, including, among others, day nurseries, hospitals, sanitariums, infirmaries, orphanages and homes for aged and infirm.
13. "Use Group I-3": This Use Group shall include all buildings designed for the detention of people under restraint, including, among others, jails, prisons, reformatories, insane asylums and similar uses.
14. "Use Group M": All buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to such purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets.
15. "Use Group R-1": This Use Group shall include all hotels, motels, and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than 30 days.
16. "Use Group R-2": This Use Group shall include all multiple family dwellings having more than two dwelling units and shall also include all dormitories, rooming houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature.
17. "Use Group S-1": All buildings and structures, or parts thereof, which are used primarily for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives; including, among others, warehouses, storehouses and freight depots.
18. "Use Group S-2": All buildings and structures, or parts thereof, which are used primarily for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings; including, among others,

warehouses, storehouses and freight depots. Such products may have a negligible amount of plastic trim such as knobs, handles or film wrapping.

5:18-2.4A Type Aa through Aj life hazard uses

(a)-(d) (No change.)

(e) Type Ae life hazard uses are as follows:

1.-3. (No change.)

4. Public and private K-12 educational buildings with a maximum permitted occupancy greater than 50 persons.

(f)-(j) (No change.)

5:18-2.5 Required inspections

(a)-(d) (No change.)

(e) In addition to inspecting life hazard uses, a local enforcing agency may, by giving notice to the Bureau of Fire Safety, accept responsibility for cyclical inspection and enforcement of the Uniform Fire Code in hotels and multiple dwellings that are not life hazard uses. A local enforcing agency that accepts this responsibility shall inspect each multiple dwelling that is not a life hazard use and each hotel that is not a life hazard use at a frequency not less than that currently provided for in the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10.

1. A local enforcing agency may, by ordinance, establish reasonable fees to cover the cost of such inspections in accordance with N.J.A.C. 5:18A-2.3(b).

(f) If a building is a multiple dwelling or a hotel, as defined in N.J.S.A. 55:13A-3, or a rooming house or boarding house, as defined in N.J.S.A. 55:13B-3, the local enforcing agency shall send a copy of the certificate of inspection to the Bureau of Fire Safety at the time of issuance of the certificate.

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. (No change.)

2. In a public or private K-12 educational building registered as a life hazard use, no permit shall be required for activities which are consistent with the designed and intended use of the building or part thereof.

Renumber existing 2.-6. as 3.-7. (No change in text.)

5:18-2.8 Fees, registration and permit

(a) (No change.)

(b) Where more than one life hazard use exists under one ownership at a given location, the highest life hazard use shall be registered at full fee and subsequent life hazard uses at one-half the scheduled fee; provided, however, that no public or private K-12 educational building shall pay more than one $115.00 life hazard use registration fee, regardless of the number or type of life hazard uses contained within the building.

5:18-4.1 Code adopted; scope

(a) (No change.)

(b) The following buildings, classified within the Use Groups set forth below in accordance with the definitions provided in N.J.A.C. 5:18-1.5, shall be in compliance with all applicable requirements of this subchapter.

1. Theaters incorporating a raised stage, platform, or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment, equipped with fixed seats; and which are classified as Use Group A-1-A.

2. Night clubs, dance halls, discotheques without a theatrical stage and which are classified as Use Group A-2.

3. Eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more, and which are classified as Use Group A-3.

4. Amusement buildings and places of amusement designed to disorient, reduce vision, present barriers, or otherwise impede the free flow of traffic, such as haunted houses, fun houses, tunnels of love and similar uses and which are classified as Use Group A-3.

5. Institutional buildings and similar facilities including hospitals and long-term care facilities, which house people suffering from physical limitations due to age, health or handicaps and which are classified as Use Group I-2.

6. Institutional buildings or similar facilities including acute alcoholism treatment, out-patient surgery, renal dialysis facilities, abortion clinics and birthing centers, and which are classified as Use Group I-2.

7. Day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2-1/2 years, and which are classified as Use Group I-2.

(c) The following buildings shall be in compliance with all applicable requirements of this subchapter.

1. High rise structures as defined in N.J.A.C. 5:18-1.5.

2. Prisons or other facilities where residents, occupants or inmates are kept under restraint and which are classified as Use Group I-3.

3. Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers which are classified as Use Group B.

4. Residential health care facilities, boarding homes and similar facilities which are classified as Use Group I-1.

5. Eating and drinking establishments which are primarily eating establishments with a maximum permitted occupancy of 200 or more and which are classified as Use Group A-3.

6. Hotel or motel structures four stories or more in height or exceeding 100 rooms which have interior means of egress and which are classified as Use Group R-1.

7. Any story which meets the criteria of N.J.A.C. 5:18-4.7(h) and which has a maximum permitted occupancy of 50 or more persons, regardless of Use Group classification; provided, however, that this paragraph shall not be applicable to fire suppression requirements until *[one year after the effective date of N.J.A.C. 5:18-4.7(h)]* ***November 6, 1990***.

8. Motion picture theaters without a theatrical stage and which are classified as Use Group A-1-B.

9. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area and which are classified as Use Group M.

10. Stadiums, race tracks and other similar exterior places of assembly with grandstands and which are classified as Use Group A-5.

11. Industrial and commercial uses which incorporate any hazardous operation, storage or use of combustible materials as described in N.J.A.C. 5:18-2.4B.

12. Buildings in which flammable cleaning solvents are used for dry cleaning purposes and which are classified as Use Group H.

13. Buildings which exceed 12,000 square feet of gross floor area and which have atrium spaces three or more stories in height regardless of Use Group classification.

14. Covered mall structures which exceed 12,000 square feet of gross floor area.

(d) All buildings for which requirements are established in this subchapter and which are not listed in (b) or (c) above shall be in compliance with such applicable requirements of this subchapter by June 16, 1989, unless a later date for compliance is set forth in this subchapter.

(e) (No change.)

5:18-4.7 Fire suppression systems

(a)-(g) (No change.)

(h) In all buildings, any windowless basement or story located below the seventh story shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code *[within one year after the effective date of these amendments]* ***by November 6, 1990***.

1. Stories or basements shall not be considered windowless when there is provided on at least one side of such story or basement fire fighter access through openings, such as windows, doors or access panels, which are located entirely above the adjoining grade level. If such openings are not less than 32 inches by 48 inches in size, they shall be spaced not more than 100 feet apart in each story or basement; if not less than 22 inches by 42 inches in size, they shall be spaced not more than 30 feet apart. Such openings shall be un-

obstructed to allow fire fighting and rescue operations from the exterior.

i. Openings shall have a sill height of not more than 36 inches, shall be readily identifiable and openable from the outside or shall be glazed with plain flat glass.

2. When openings in a story are provided on only one side and the opposite wall of such story is more than 75 feet from such openings, the story shall be considered windowless unless openings as specified above are provided or can be installed on at least two sides of the exterior walls of the story. If any portion of a basement is located more than 75 feet from openings as specified above, the basement shall be considered windowless.

3. Windowless basements not exceeding 10,000 square feet in area shall be exempt from this automatic suppression requirement, provided the following conditions are met:

i. A supervised automatic fire alarm system shall be installed in accordance with the New Jersey Uniform Construction Code;

ii. In basements greater than 3000 square feet, but not exceeding 10,000 square feet in area, the required suppression system need not be connected to a water supply other than an existing domestic supply. The system shall be provided with a fire department connection, which shall be marked with a sign reading "Basement Area Sprinkler Water Supply".

(i)-(j) (No change.)

(k) In buildings containing mixed uses, one or more of which requires automatic suppression in accordance with this section, suppression will not be required throughout the building, provided that the uses requiring suppression are separated from those not requiring suppression by fire resistive construction having a minimum one hour rating. In Use Group H, the rating is to be increased to two hours.

5:18-4.9 Automatic fire alarms

(a) (No change.)

(b) An automatic fire alarm system shall not be required in buildings, other than boarding homes of Use Group I-1, equipped throughout with an automatic fire suppression system, a manual fire alarm system and single station smoke detectors located in the immediate vicinity of sleeping areas in accordance with NFiPA 72E or 74 as applicable.

(c) (No change.)

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. Each mezzanine with an occupant load of more than 50 and in which the travel distance to an exit exceeds 75 feet shall have access to at least two independent means of egress *[within one year of the effective date of these amendments]* ***by November 6, 1990***.

2. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress unless judged to be dangerous for use under emergency exiting conditions. Any new fire escapes shall be constructed and installed in accordance with Uniform Construction Code Formal Technical Opinion No. FTO-3, dated March 1985.

i.-iii. (No change.)

(b)-(k) (No change.)

(l) Means of egress doors shall conform to the following:

1. All egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel;

2. In building of Use Groups R-1 and R-2 all doors opening onto a passageway at grade or exit stair shall be self-closing or automatic closing by listed closing devices.

3. All dwelling unit, guest room or rooming unit corridor doors in buildings of Use Groups R-1, R-2, and I-1 shall be at least 1-3/8 inch solid core wood or approved equal with approved door closers and shall not have any glass panels, other than approved wire glass in metal frames. Corridor doors shall not be constructed of hollow core wood, shall not contain louvers and shall not be of panel construction. Doors shall fit both plumb and level in frames, and be reasonably tight fitting. All replacement doors shall be 1-3/4 inch solid core wood or approved equal, unless existing frame will accommodate only a 1-3/8 inch door.

i. Existing doors meeting the requirements of Federal Housing and Urban Development Rehabilitation Guidelines No. 8 or of Section 5 of Appendix B of the BOCA Basic/National Existing Structures Code, 1984 Ed. for a rating of 15 minutes or better shall be accepted as meeting the provisions of this requirement.

(1) Modifications made to existing doors to achieve the required rating shall be conducted in accordance with the Uniform Fire Code.

ii. Existing doors in buildings provided with approved, complete automatic suppression shall be required only to provide a smoke barrier; shall not contain louvers; shall fit plumb and level; and be reasonably tight fitting.

iii. In group homes with a maximum of 15 occupants, and which are protected with an approved automatic detection system, closing devices may be omitted.

4. (No change.)

5. All required exit doors equipped with latching devices in buildings or portions thereof of Use Group A with an occupant load greater than 100 shall be equipped with approved panic hardware *[within one year of the effective date of these amendments]* ***by November 6, 1990***.

(m)-(o) (No change.)

5:18-4.13 Protection of interior stairways and other vertical openings

(a)-(b) (No change.)

(c) Interior stairways and other vertical openings connecting no more than three levels shall be enclosed with approved assemblies and opening protectives having a fire resistance as follows:

1. In Use Group A, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. When connecting the main floor and mezzanines; or

ii. (No change.)

2. In Use Group B, a minimum 30 minute fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barriers may be omitted in buildings not exceeding 3,000 square feet per floor or when the building is protected throughout by an approved automatic fire suppression system.

3. In Use Group E, a minimum one-hour fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings connecting not more than three floor levels. Such barrier may be omitted when the building is protected throughout by an approved automatic fire suppression system.

4. In Use Group F, a minimum one-hour fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted:

i. In special purpose occupancies when necessary for manufacturing operations and direct access is provided to at least one protected stairway;

ii. In buildings which are protected throughout by an approved automatic fire suppression system;

5. In Use Group H, a minimum one-hour fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when necessary for manufacturing operations and every floor level has direct access to at least two remote enclosed stairways or other approved exits.

6. In Use Group I-1, a minimum one-hour fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted at either the top or bottom of a stairway

which connect not more than two floor levels, when such stairway does not serve as a required means of egress, and the occupant load does not exceed 12, excluding staff.

7. (No change.)

8. (Reserved)

9. In Use Group M, a minimum 30 minute fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when:

i. Openings connect only two floor levels, such as between the street floor and mezzanine or second floor; or

ii. Occupancies are protected throughout by an approved automatic fire suppression system.

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. In buildings which are protected throughout by an approved automatic fire suppression system; or

ii. In buildings which meet the definition of a "guest house" in N.J.A.C. 5:18-1.5 if the following conditions are met:

(1) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c); and

(2) Any exit access corridor exceeding eight feet in length which serves two means of egress, at least one of which is an unprotected vertical opening, shall be separated from the vertical opening by a one-hour fire barrier; or

iii. In buildings with less than 25 guests in which the following conditions are met:

(1) Every sleeping room is provided with an approved window having a sill height not greater than 44 inches;

(2) Every sleeping room above the second floor is provided with direct access to a fire escape or other approved secondary exit;

(3) Any exit access corridor exceeding eight feet in length which serves two means of egress, at least one of which is an unprotected vertical opening, shall be separated from the vertical opening by a one-hour fire barrier; and

(4) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c).

11. In Use Group R-2, a minimum 30 minute fire barrier shall be provided *[within one year of the effective date of these amendments]* ***by November 6, 1990*** to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. In buildings which are protected throughout by an approved automatic fire suppression system;

ii. When the vertical opening connects not more than two floor levels with not more than four dwelling units per floor and each dwelling unit has access to a fire escape or other approved secondary exit; or

iii. In owner-occupied buildings with not more than four dwelling units per floor, and in which the following conditions are met:

(1) Every sleeping room is provided with an approved window having a sill height not greater than 44 inches;

(2) Every dwelling unit or sleeping room above the second floor is provided with direct access to a fire escape or other approved secondary exit; and

(3) The building is protected throughout by an automatic fire alarm system, installed in accordance with the New Jersey Uniform Construction Code and supervised in accordance with N.J.A.C. 5:18-4.9(c).

5:18A-3.3 Duties of fire officials

(a) (No change.)

(b) Whenever a fire death occurs within the jurisdiction of a local enforcing agency, the fire official shall notify the Bureau of Fire Safety via telephone within 48 hours of the death. A Fire Incident and Casualty report shall be forwarded to the Bureau of Fire Safety within 30 days.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Utility Load Management Device Installation Programs

Adopted New Rule: N.J.A.C. 5:23-2.18A

Proposed: February 6, 1989 at 21 N.J.R. 233(a).

Adopted: September 29, 1989 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: October 3, 1989 as R.1989 d.550, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: November 6, 1989.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments in support of the proposed new rule were received from representatives of Atlantic Electric Company, the utility that requested the adoption of the new rule in order to make its load management device installation program more cost effective, as well as from Public Service Electric and Gas Company, Jersey Central Power and Light Company, the Board of Public Utilities, the New Jersey Environmental Lobby, the Division of Energy Planning and Conservation of the Department of Commerce, Energy and Economic Development, firms involved in the manufacture of load management devices, and electrical contractors involved in their installation. The main points made by these commenters were that (1) load management devices installed in air conditioners and electric water heaters are a necessary component of an overall State program to limit peak electrical consumption and thereby both conserve fuel and reduce the need for new generating facilities; (2) load management devices are safe and, while over 2.5 million have been installed throughout the United States, they have never been the cause of any injury or property damage; (3) most jurisdictions in which load management programs are in operation recognize their installation as a minor, routine procedure that does not require any inspection; and (4) inspection of all load management devices would increase the cost of the program (since fees would have to be paid) and would probably eliminate it as an economical alternative to the building of new generating facilities.

The Department finds merit in these comments. Indeed, in the event that the expectations of the supporters of the proposed new rule are realized over a reasonable period of time, there would be good reason to give consideration to a further amendment to further reduce or eliminate the inspection requirement for these devices.

Comments in opposition to the proposed new rule were received from the State Board of Examiners of Electrical Contractors, as well as from representatives of the Middle Department Inspection Agency, the New Jersey Plumbing Inspectors Association, the New Jersey State Council of Electrical Contractors Associations, the New Jersey Chapter of the International Association of Electrical Inspectors, the Municipal Electrical Inspectors Association of New Jersey, the New Jersey State League of Municipalities and the Building Officials Association of New Jersey. The issues raised by these commenters included the following: (1) a number of these installations have failed inspection; (2) even if the devices are safe, hazards can arise as a result of faulty installation; (3) less than 100 percent inspection is inconsistent with the spirit and letter of the State Uniform Construction Code Act; (4) the opportunity to correct pre-existing violations would be lost in 70 percent of the homes if only 30 percent are inspected; (5) contractors, inspectors and municipalities might be held liable if there are electrical fires due to uninspected improperly installed devices; (6) municipalities would lose potential revenue from the uninspected

70 percent but would still have to administer the program; and (7) this program might set a precedent for less than 100 percent inspection in other areas of construction code enforcement.

In response to these concerns, the Department states that it is satisfied, based on national experience to date, that the devices to be installed are safe and that the only way in which they can malfunction is by staying in a closed position and allowing an air conditioning unit or water heater to continue operating normally, that the controls under which the installations are being performed are such as to eliminate any substantial likelihood of injury or property damage and that 100 percent inspection is therefore unnecessary. The Department further finds that the violations that are alleged to have been uncovered seem to have been preexisting violations but it is not the purpose of this program to uncover preexisting violations and the program should not be used as a pretext for that purpose, desirable as that otherwise might be, especially since there is a likelihood of impairing the feasibility of an energy conservation program that is necessary to implement an established State policy. Furthermore, the Department notes that municipalities do not have to pay either private inspection agencies or employees for the cost of work they do not have to do, that the electrical contractors who are participating in the program, unlike those who are not doing so, do not seem to be concerned about added liability due to non-inspection of 70 percent of the work and it is doubtful under existing State law whether anyone would be successful in suing an inspection agency or municipality that can show that it acted in accordance with State regulations. Furthermore, since no inspection at all is required for replacement of air conditioning units, it is difficult to argue persuasively that 100 percent inspection is required for radio controlled switch devices attached to those units, and the installation of these devices is a simple, routine procedure involving an off/on switching device (it being understood that any other work done at the same time as the installation of the device would require the usual permit and inspection) that does not establish any sort of precedent for other types of construction activity.

However, in light of Atlantic Electric's assurances of its control of the quality of the installations to be performed, as well as the national experience that establishes the safety of the devices, the Department considers that it would be appropriate and in the public interest, in order to accommodate the views of those still concerned about possible safety problems, to reduce the contractor and utility defect levels deemed acceptable for continued participation and to make clear the utility's own quality assurance and control obligation. The 10 percent random inspection by the utility, which the utility has assured the Department it is prepared to do, will be an added safeguard to the public. Since the Department will receive reports both from the utility and the various municipal and private third-party inspection agencies, it will be able to look into any significant disparities.

The Department is very much aware of concern on the part of the utilities that any disputes arising as to the acceptability of any installation be resolved expeditiously. The Department is satisfied that the existing appeals processes (the respective local and county construction boards of appeals and, where the Department is the enforcing agency, the Office of Administrative Law) are adequate for this purpose. However, as has been indicated, the Department will monitor the reports being submitted both by the inspection agencies and by the utilities.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

5:23-2.18A Utility load management device installation programs

(a) Whenever a public utility proposes to undertake a program of installing load management devices at the properties of a substantial number of service customers within a limited period of time, it may apply to the Department for permission to utilize the procedure set forth in this section.

(b) A utility with a program to install load management devices shall submit detailed information to the Department on the design of the device.

(c) The utility shall provide an educational program acceptable to the Department to acquaint any interested Department personnel and municipal subcode officials with the device and with installation and operating procedures.

(d) The utility shall insure that all devices to be installed are identical in design, listed and labeled or otherwise approved according to this chapter for their intended use.

(e) At least one month in advance of any installations, the utility shall submit to the Department, and to each affected municipality, notice of the anticipated number of installations to be performed in each municipality. A maximum and a minimum figure may be submitted where there is uncertainty about the number to be scheduled by customers. An approximate number of weeks for installations in that municipality shall be given along with an approximate number of installations per week.

1. Each week, in advance of installation, the utility shall notify the municipality of any change in the anticipated number of installations for that week. No weekly number of installations shall be so great that the cumulative number of installations in the municipality shall exceed the maximum anticipated number submitted.

2. Prior to the commencement of any installation, and as soon as may be practicable, the utility or its contractors will provide to each municipality notice of the actual sites of installations.

3. The Department and the municipalities shall be notified as soon as possible in the event of any change in existing schedules by the utility or its contractors.

(f) On the Monday following installations, the utility shall submit to each municipality completed permit applications for all installations completed in the municipality's jurisdiction during the preceding week. A listing of all permits so delivered shall be filed by the utility with the Department.

(g) Applications shall bear the name of the installation contractor and the date of installation. If, for any reason, a permit application is found to have been submitted in error, the utility or its contractors shall notify the municipality and the Department as soon as possible.

(h) The municipality shall submit weekly reports to the Department which shall include a listing of permit applications received pursuant to (f) above together with the following information: "installations completed—permit applications received", "errata", if applicable, and, pursuant to (k) below, "installations inspected—date, contractor, pass or fail". If a municipality so chooses, it may review and certify data presented to it by the utility, if that data is complete and accurate. Data on pass/fail rates for inspections shall specify each contractor so that program-wide pass/fail rates may be tabulated.

(i) If any municipality or the Department has reason to suspect that permit applications are being mishandled or carelessly accounted for, an investigation may be conducted of the utility's permit files for this project and of any permits in the possession of individual contractors in the utility's employ for this project.

(j) The utility shall pay to each municipality 30 percent of the permit fees otherwise due and owing.

(k) The municipality shall inspect 30 percent of the installations performed and shall record the results of those inspections to be forwarded to the Department in its weekly report pursuant to (h) above. ***The utility shall inspect at least 10 percent of the installations performed and shall record the results of those inspections and forward those results concurrently to the municipality and to the Department weekly.*** Any data submitted in reports by the utility to the municipality and the Department may be omitted from the municipality's report, if, after reviewing the utility's data, the municipality finds it to be complete and accurate.

(l) If a municipality ***or a utility*** discovers a defect rate of not less than *[10]* ***seven*** percent for any contractor employed by the utility, the Department shall be immediately notified. The Department shall investigate and, in the interest of public safety, shall be authorized to order that:

1. The offending contractor cease to be employed by the utility for this project;

2. The utility remit the fees necessary to inspect all existing installations of the offending contractor in all municipalities where that contractor has performed work;

3. That each municipality affected perform inspections of all the offending contractor's existing installations; and

4. That the utility or its designees correct or remove all defective installations to the satisfaction of the municipal officials.

(m) If, at any time, the Department tabulates a program-wide defect rate equal to or exceeding *[five]* ***three*** percent, the utility shall be notified and the inspection rate and fee rate in (j) and (k) above shall rise to 50 percent.

(n) If the *[five]* ***three*** percent or greater program-wide defect rate cannot be reduced within two weeks, the program may be terminated by the Department by notifying the utility and all affected municipalities.

(o) A municipality in which a defect rate equal to or greater than *[10]* ***seven*** percent has been twice *[recorded]* ***reported to the Department*** and which has reason to believe that the program cannot be successfully implemented within its jurisdiction may notify the Department and the utility of the need for termination of the program in that municipality. The Department, upon verifying the accuracy of the municipality's claim, shall issue a notice to the utility and to the municipality ordering the termination of the program in that municipality.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Educational Facilities Use Group
Adopted Amendment: N.J.A.C. 5:23-3.5

Proposed: September 5, 1989 at 21 N.J.R. 2783(a).
Adopted: October 10, 1989 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: October 13, 1989 as R.1989 d.555, **without change.**

Authority: N.J.S.A. 52:27D-123.

Effective Date: November 6, 1989.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

5:23-3.5 Posting structures

(a) (No change.)

(b) Posted occupancy load: Every building and structure and part thereof designed for use as a place of public assembly or as an institutional building for harboring people for penal, correctional, educational, medical or other care or treatment (use groups A, E and I) shall be posted with an approved placard designating the maximum occupancy load.

(c)-(e) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Assumption of Local Enforcement Powers
Adopted Amendment: N.J.A.C. 5:23-4.3

Proposed: August 21, 1989, at 21 N.J.R. 2436(a).
Adopted: October 1, 1989, by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: October 4, 1989, as R.1989 d.551, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: November 6, 1989.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: One construction official advised the Department of his disagreement with the idea that the Department be allowed to take over local enforcement powers and that he believes the appeals process to be insufficient.

RESPONSE: The Department's response is that its power to assume local code enforcement responsibilities was established by an amendment to the State Uniform Construction Code Act, P.L. 1985, c. 21, not by administrative rule. The procedures set forth in paragraph N.J.A.C. 5:23-4.3(f)1 were developed in consultation with local officials who submitted comments in response to the original proposal at 20 N.J.R. 1764(a) (August 1, 1988).

COMMENT: Another construction official and a representative of a private third-party enforcing agency protest the absence of any limitations on the Department's power to assume jurisdiction over specific projects.

RESPONSE: As was stated in the summary of the proposal, N.J.A.C. 5:23-4.3(f)2 is limited to a restatement of the statute. It is included in the rules for purposes of clarity only; failure to adopt it would change nothing since the Department's authority to take over specific projects even without any rules has been upheld by the Appellate Division. The Department is satisfied that the Appellate Division was correct in doubting the usefulness of a rule modifying the statute with regard to the takeover of specific projects. The Department must be free to act without undue let or hindrance, particularly when the continued existence of a municipal department is not in any way at stake. The Department has taken over specific projects only in a few exceptional cases. Since it uses its own inspectors in such cases, private third-party agencies may find themselves removed from projects. However, the loss of an occasional project is not likely to have a disruptive effect upon a private agency sufficient to create a necessity for a provision limiting the Department's powers in order to protect the private agencies.

COMMENT: The Building Officials Association of New Jersey, Inc. considers the language of N.J.A.C. 5:23-4.5(f)2 to be "ambiguous" and to leave open the possibility that intervention may come about as the result of a complaint by a disgruntled contractor, property owner or politician. The Association recommends that language be added requiring that "there should be a technical or substantive code enforcement issue involved, which is in the public interest."

RESPONSE: The Department points out that it is implicit in the statute that the purpose of the Department's intervention is to ensure that the code is properly enforced. The Legislature surely did not intend to authorize arbitrary intervention by the Department in order to do favors and the courts would surely not uphold any intervention not justified by a need to protect the public interest by ensuring proper code enforcement. On the other hand, if some future administrator in the Department were determined to abuse the system in order to do someone a favor, it is unlikely that he would be deterred by a requirement that he find some code enforcement issue to be involved and that he find intervention to be in the public interest. Any intervention for improper reasons would be open to court challenge, regardless of whether the added language were adopted or not. The Department therefore prefers to accept the guidance of the Appellate Division as to the marginal value of any standards modifying the statute.

Full text of the adoption follows:

5:23-4.3 Municipal enforcing agencies—establishment

(a)-(e) (No change.)

(f) Departmental intervention:

1. Except as otherwise provided in (f)2 below, whenever the Department shall have reasonable cause to believe that a local enforcing agency is not carrying out its functions as intended by the Act and regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body, to the construction official, and to the municipal manager or administrator, if any, having jurisdiction over the local enforcing agency, a notice stating the nature of the alleged failure of the local enforcing agency to perform, the implications of such failure, and a statement setting forth the corrective action required to be taken by the local enforcing agency.

i. In the case of a local enforcing agency which the Department finds to have repeatedly or habitually failed to enforce the provisions of the State Uniform Construction Code Act, the Department shall

issue an order, in the manner, and subject to the requirements, set forth in (f)1 above, to dissolve the local enforcing agency and replace it by the Department.

ii. No local enforcing agency shall be dissolved and replaced by the Department for repeated or habitual failure to enforce the regulations except upon its failure, or the failure of the governing body or official having jurisdiction over it, to comply with a notice issued by the Department setting forth corrective action required to be taken in order to ensure proper administration of the local enforcing agency and enforcement of the Code.

iii. Prior to the issuance of an order for the dissolution of any local enforcing agency and its replacement by the Department, or as an alternative to any such order, the Department shall place the local enforcing agency under the temporary supervision of an administrator employed by the Department. For the first 60 days of any period in which a local enforcing agency is under the temporary supervision of a Department administrator, the local enforcing agency shall retain fee revenue and be responsible for the payment of employee salaries and other expenses, other than the expenses of the administrator, in the same manner as if the local enforcing agency were not under the supervision of a Department administrator. In the event the period of temporary supervision extends beyond 60 days and the Department has assigned its own personnel to serve as officials and/or inspectors, fee revenue after the sixtieth day shall be paid to the Department and used by the Department to pay the costs of the local enforcing agency.

iv. In the event that any municipality having jurisdiction over a local enforcing agency subject to any notice or order issued pursuant to this paragraph is aggrieved by such notice or order, the municipality shall be entitled to an administrative hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A request for any such hearing must be mailed, within 15 days after receipt of the notice or order being appealed, to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, NJ 08625-0802. The right to a hearing under this paragraph shall also extend to any licensed code enforcement official or inspector who would be adversely affected by any Departmental order.

2. In any case in which it may find it necessary to do so, the Department may supplant or replace a local enforcing agency for a specific project.

(g) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Filing and Certification of Charges Against Tenured Employees in the Departments of Human Services, Corrections and Education

Adopted New Rule: N.J.A.C. 6:24-5.4

Proposed: July 17, 1989 at 21 N.J.R. 1939(b).

Adopted: October 4, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: October 13, 1989 as R.1989 d.553, **with a technical change** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-9, 18A:6-10 et seq. and 18A:29-14.

Effective Date: November 6, 1989.

Expiration Date: April 2, 1991.

Summary of Public Comments and Agency Response:

No comments received.

The Department has revised the heading of the proposed new rule, by adding Education as a department subject thereto. This change was necessary in order for the heading to be properly indicative of the rule's subject matter.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

6:24-5.4 Filing and certification of charges against tenured employees in the Department of Human Services *[and]***,*** Corrections ***and Education***

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6:24-5.1(b) except as herein noted. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections or by an individual within the Department of Education designated by the Commissioner of Education. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b).

(b) The Director of Employee Relations, the Director of the Office of Educational Services or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of his/her determination in writing in the manner prescribed by N.J.A.C. 6:24-5.1(b)5.

(c) In the event that the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then he or she shall file such charges and the required certification with the Commissioner of Education together with proof of service upon the employee.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6:24-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising in the Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and

3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) The filing and service of an answer to written charges pursuant to the Tenure Employees Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

(a)

STATE BOARD OF EDUCATION

Library Network Services

Readoption with Amendments: N.J.A.C. 6:70

Proposed: July 17, 1989 at 21 N.J.R. 1940(a).
Adopted: October 4, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Filed: October 17, 1989 as R.1989 d.572, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15 and 18A:73-35a et seq., specifically 18A:73-35.

Effective Date: October 17, 1989, Readoption.
November 6, 1989, Amendments and Changes upon Adoption.
Expiration Date: October 17, 1994.

Summary of Public Comments and Agency Responses:
Three individuals spoke at the July 19, 1989 public testimony session provided by the State Board of Education and one letter with comments was received.

COMMENT: Three commenters suggested that the process of revocation of a regional library cooperative be clarified.

RESPONSE: The Department agrees and has made the change upon adoption.

COMMENT: The same commenters recommended adding criteria upon which to base revocation of a regional library cooperative.

RESPONSE: The Department agrees and has made the change upon adoption, adding a reference to the N.J.A.C. 6:70-1.11 cooperative responsibilities and services.

COMMENT: The same commenters recommended designating a minimum percentage of appropriated funds below which regional library cooperative funding should not fall.

RESPONSE: The Department disagrees, as a mandated minimum percentage of funding could limit flexibility in choosing the most economical and effective delivery of network services.

COMMENT: One commenter questioned the proposed new language giving the State Librarian authority to revoke designation of a regional library cooperative.

RESPONSE: The Department considers the proposed new language proper. The present rules authorize the State Librarian to establish regional library cooperatives; therefore, the State Librarian must be able to revoke designation.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:70.

Full text of the amendments follows (additions to proposal shown in boldface with asterisks ***thus***).

CHAPTER 70
LIBRARY NETWORK SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

6:70-1.1 Scope and purpose

The rules set forth in this chapter provide for the establishment and designation of regions and regional library cooperatives designed to promote the cooperative use of services and materials of all types of libraries in the State through the provision of library services on a regional as well as a Statewide basis, pursuant to the provisions of P.L. 1983, c.486 (N.J.S.A. 18A:73-35a et seq.), known as the Library Network Law.

6:70-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Citation and location services" means a specialized bibliographic information service. Citation service is the process of verifying, completing, and/or correcting the bibliographic information about a specific work. Location service is the process of identifying libraries that own a specific work or, in some instances, the process of identifying other agencies through which the work may be obtained or consulted.

"Council of members" means the voting representatives of the members of the regional library cooperative.

. . .

"Interlibrary loan" means a transaction between libraries, a form of resource sharing by which one library's collection is utilized by another library in response to a mediated request for a specific item on behalf of its users. The original or a copy of the item may be provided.

"Lay representative" means a New Jersey resident who is not eligible for a certificate as a professional librarian, associate educational media specialist or educational media specialist and is not in the employ of any New Jersey library or library-related agency defined in this chapter. Members of library boards of trustees shall be considered lay representatives.

. . .

"Library network" means all libraries in all regional library cooperatives, the State Library, and any other libraries providing services to other libraries.

"Library region" means a multi-county area designated by the State Librarian as the geographic area within which libraries may establish a regional library cooperative.

"Library-related agency" means a county audio-visual aids commission established under N.J.S.A. 18A:51; learning resource center; regional curriculum services unit; or any other nonprofit organization meeting the criteria for membership in the regional library cooperative in accordance with N.J.A.C. 6:70-1.5(b).

. . .

"Multitype" means libraries of more than one type (academic, institutional, public, school and special) and library-related agencies.

. . .

"Reference service" means the response to user needs by either mediated question handling or non-mediated access to information. A mediated reference transaction involves the use, recommendation or instruction in the use of one or more information sources, or referral to such sources elsewhere, by a member of the reference/information staff. A non-mediated reference transaction is the use of on-site resources without the assistance of reference/information staff.

. . .

"Regional library cooperative" means a membership organization of libraries and library-related agencies within a library region organized as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. which has agreed to provide and receive cooperative service and which has been designated a regional library cooperative by the State Librarian.

"Residents" means persons residing, employed or attending school in the library region.

. . .

"State contract library" means a library, library-related agency, local library cooperative, or commercial vendor with which the State Library contracts for the purpose of providing library services.

6:70-1.3 Designation of library regions

(a) The State Librarian, with the approval of the State Board of Education, shall designate no more than seven library regions within the State. No county shall be divided among two or more library regions. The library regions shall be established on the basis of, but not limited to, the following considerations:

1.-6. (No change.)

(b) (No change.)

(c) After the first review by the State Librarian, members of a regional library cooperative located within the same county may request that the county be transferred to a different library region when a majority of the members in that county vote for such a transfer.

(d) If a request for a transfer from one library region to another has been denied, the appeals and hearing process as specified in N.J.A.C. 6:70-1.18 shall be followed.

6:70-1.4 Regional library cooperative; formation

(a) Upon approval by the State Librarian of the plan for service and the plan and budget for the first year of operation of the regional library cooperative, the State Librarian shall establish and designate the regional library cooperative.

1. Each duly established and designated regional library cooperative shall be eligible for a grant not to exceed $50,000 to fund the first year of operation of the regional library cooperative, in accordance with a plan and budget submitted to, and approved by, the State Librarian.

2. Applicants whose request to be designated as a regional library cooperative has been denied may proceed with the appeals and hearing process described in N.J.A.C. 6:70-1.18.

(b) The established and designated regional library cooperative shall constitute a council of members and shall be incorporated as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. The council of members shall organize, elect an executive board, and adopt bylaws within six months.

6:70-1.5 Regional library cooperative; organization and membership

(a) All members of a regional library cooperative are members of the New Jersey Library Network and shall be eligible to receive and participate in the regional and Statewide services of the Network.

(b) To be eligible to become a member of a regional library cooperative, a library or library-related agency shall have explicit service objectives, a fixed location and regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and qualified and responsible staff. Its organizational structure shall be identifiable with a legal basis for operation and an established funding pattern. It shall be willing and able to contribute to the appropriate services and programs as determined by the regional library cooperative, and mutually agreed upon.

(c) The board of governance or the appropriate administrative authority for each eligible library and library-related agency that wishes to become a member of the regional library cooperative shall take official action as specified by the State Librarian to join the regional library cooperative.

(d) The executive board of the regional library cooperative shall review each application for membership in the regional library cooperative and shall take official action by approving or disapproving membership. If an application for membership is disapproved by the executive board, the appeals and hearing process as specified in N.J.A.C. 6:70-1.18 shall be followed.

6:70-1.6 Voting

(a) Each academic library, institutional library, public library, special library, and each library-related agency which is a member of a regional library cooperative shall have one vote in the council of members except as specified in (a)1 and 2 below. The voting representative shall be appointed by the board of governance or the appropriate administrative authority of the library or library-related agency.

1. The academic libraries which are members of a regional library cooperative and are located on a single campus shall have one vote in the council of members. The board of governance or the appropriate administrative authority for the campus shall appoint one voting member to the council of members.

2. The institutional libraries which are members of the regional library cooperative and which are part of a single institution shall have one vote in the council of members. The board of governance or the appropriate administrative authority for each institution shall appoint one voting member to the council of members.

(b) The public school libraries which are members of a regional library cooperative and are located within a single operating public school district shall be considered a single entity and shall have one vote in the council of members. They shall elect one voting representative from among themselves, whose appointment shall be subject to the approval of the chief school administrator and the district board of education.

(c) The private and parochial school libraries which are members of a regional library cooperative and are located within a single operating public school district shall be considered a single entity and shall have one vote in the council of members. They shall elect one voting representative from among themselves.

6:70-1.7 Duties of council of members

(a) The duties of the council of members of the regional library cooperative shall include, but not be limited to, the following:

1. Review and adopt bylaws, which are subject to approval by the State Librarian;

2.-4. (No change.)

6:70-1.8 Executive board; organization and duties

(a) The executive board shall be composed of a minimum of nine and a maximum of 15 members to include at least:

1. Five members elected by the council of members of the regional library cooperative: one each from an academic library, an institutional library, a public library, a school library and a special library;

2. Two members at large elected by the council of members of the regional library cooperative;

3. Two lay representatives elected in accordance with the bylaws adopted by the regional library cooperative. Each must reside within the designated area of the regional library cooperative; and

4. Additional members, up to a maximum of six, who shall be elected in accordance with bylaws adopted by the council of members of the regional library cooperative.

(b) The executive board shall be governed by the bylaws adopted by the council of members of the regional library cooperative and all board meetings shall be conducted in accordance with the Open Public Meetings Act pursuant to N.J.S.A. 10:4-6.

(c) The duties of the executive board shall be to:

1. Hire an executive director and any necessary additional staff, fix their compensation and establish terms and conditions of employment;

2. Develop the five-year plan and submit it to the council of members of the regional library cooperative for approval;

3. Develop the annual operating program and budget and any revisions to the five-year plan and submit them in writing to the council of members of the regional library cooperative for approval;

4. Contract with libraries, library-related agencies, local library cooperatives, commercial vendors, individuals, or any other designated regional library cooperative as may be necessary to implement the five-year plan for the regional library cooperative;

5. Receive and disburse all income;

6. Submit quarterly a written report including a financial report to the membership of the regional library cooperative and to the State Librarian;

7. Submit the five-year plan, the annual update, and the annual budget to the State Librarian for review and approval; and

8. Submit to the State Librarian an annual report, including a program evaluation and financial audit, and any additional reports as the State Librarian may require.

6:70-1.9 Executive board; term of office

(a)-(b) (No change.)

(c) Vacancies shall be filled for the unexpired term in accordance with the provisions of the bylaws.

6:70-1.10 Executive director; appointment and duties

(a) The executive director hired by the executive board of the regional library cooperative shall be eligible for certification as a professional librarian or educational media specialist by the State Department of Education or have graduated from a master's degree program in library science.

(b) The duties of the executive director shall include, but not be limited to, the following:

1. Coordinate and administer the activities, programs and services of the regional library cooperative;

2. Supervise the staff of the regional library cooperative;

3. Assist in developing the five-year plan for executive board review and council of members' approval;

4. Assist in developing the annual program and budget for review by the executive board and approval of the council of members of the regional library cooperative;

5. Negotiate all contracts for executive board approval; and
6. Attend meetings of the executive board and of the regional library cooperative.

6:70-1.11 Regional library cooperative; responsibilities and services

(a) Within one year following establishment and designation as a regional library cooperative and receipt of an establishment grant, each regional library cooperative shall submit for approval by the State Librarian a five-year plan for regional library cooperative services and an annual program and operating budget in support of the plan.

(b) Annually thereafter, each regional library cooperative shall submit for approval by the State Librarian any revisions to its five-year plan and an annual program and operating budget in support of the plan.

(c) The goals, objectives, programs, and activities specified in a five-year plan for regional library cooperative services shall provide that:

1. All contracts meet applicable Federal and State rules;
2. The terms and conditions of all contracts be part of and made consistent with the goals, objectives, programs and activities of the plan;
3. All contract services be provided to member libraries, library-related agencies and residents of the library region in accordance with the plan; and
4. In general, each regional library cooperative shall contract with at least two different types of libraries to provide regional library service.

(d) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the following services are provided in each region:

1. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the library region;
2. Interlibrary loan services on behalf of residents of the library region;
3. Delivery services for library materials; and
4. Citation and location services for library materials.

(e) Each regional library cooperative shall include the services listed in (d) above in its five-year plan and specify how the services will be provided to residents of the region. The regional library cooperatives may contract with libraries, library-related agencies, local library cooperatives, commercial vendors or individuals for the provision of any or all of these services on a regional basis.

(f) (No change in text.)

(g) The five-year plan for regional library cooperative services shall be reviewed and evaluated by the executive board on an annual basis and amended as appropriate to reflect any change approved by the council of members of the regional library cooperative, and to provide for an annual program and operating budget. Any amended five-year plan and the annual program and budget shall be submitted to the State Librarian for review and approval.

6:70-1.12 Withdrawal from regional library cooperative

Any member may withdraw from a regional library cooperative when the board of governance or the appropriate administrative authority determines by resolution or other recorded act to withdraw. Notification of intent to withdraw shall be submitted by the board of governance or the appropriate administrative authority to the executive board of the regional library cooperative, with a copy to the State Librarian. The notice shall be filed on or before April 1 of any year, and withdrawal shall take place on or before June 30 of the ensuing year. Upon discontinuing membership, the member relinquishes its rights to any funds, supplies, materials, equipment or property held by or belonging to the regional library cooperative. Upon receipt of such notification and the satisfaction of all obligations by the withdrawing member, the executive board of the regional library cooperative shall officially note the withdrawal and shall file notice of this action with the State Library.

6:70-1.13 Dissolution of regional library cooperative

(a) The regional library cooperative may submit an application for dissolution to the State Librarian when:

1. The council of members receives a resolution for dissolution from the executive board; or
2. A petition to dissolve is signed by 40 percent of the council of members of the regional library cooperative; and
3. The governing bodies of a majority of the council of members approve the dissolution.

(b)-(d) (No change.)

(e) Each duly established and designated regional library cooperative shall remain in existence until such time as the State Librarian either revokes its designation as a regional library cooperative ***as specified in (e)1 below*** or approves a plan for dissolution of the regional library cooperative.

1. Revocation of designation as a regional library cooperative will occur when the appeals and hearing process specified in N.J.A.C. 6:70-1.18 has been completed and a regional library cooperative's five year plan, annual revision of the five year plan, annual program or annual budget are not approved by the State Librarian ***due to non-compliance with the provisions of N.J.A.C. 6:70-1.11***.
2. Upon revocation of the designation as a regional library cooperative the State Librarian will determine if the area of service can be allocated to other adjoining regional library cooperatives and whether the assets and liabilities of the regional library cooperative can be assumed and absorbed by adjoining regional library cooperatives or by a new regional library cooperative, and will take into consideration any other factors which relate to the operation and function of the regional library cooperative.

6:70-1.14 Local library cooperatives

Any group of academic, institutional, public, school, or special libraries or library-related agencies, or any combination thereof, may organize as a nonprofit organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., and apply for designation to one or more regional library cooperatives as a local library cooperative for the provision of cooperative or reciprocal library services among themselves on behalf of their collective library patrons. The local library cooperative may include members from more than one regional library cooperative and may receive regional or Statewide contracts for services. Local library cooperatives are not eligible for membership in a regional library cooperative.

6:70-1.15 Statewide library services

(a) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the services listed in N.J.A.C. 6:70-1.11(d) are provided. The State Library may contract with libraries, library-related agencies, or commercial vendors to provide any or all of these services on a Statewide basis.

(b) Other services also may be provided Statewide.

6:70-1.16 Library network review board

(a) A library network review board shall be appointed to advise the State Librarian with respect to:

1. (No change.)
2. The percentage of the network budget allocation to be expended on Statewide and on regional services;

Existing 2.-6. renumbered as 3.-7. (No change in text.)

(b) Membership of the library network review board shall be established as follows:

1. Each regional library cooperative shall elect two members from its council of members in accordance with the bylaws adopted by the regional library cooperative; and
2. The State Librarian shall appoint five members including library users.

(c) Each member of the library network review board shall serve for a term of two years. No member of the library network review board shall serve for more than two consecutive terms. Upon serving two consecutive terms, a member may serve again only after an interim of at least two years. Vacancies shall be filled for the unexpired term only. Vacancies occurring among the members elected by the regional library cooperatives shall be filled by the regional library

cooperative in which the vacancies occurred. Vacancies occurring among the members appointed by the State Librarian shall be filled by the State Librarian.

6:70-1.17 Allocation of library network funds

(a) Each year the State Librarian shall determine the amount of the network budget allocation to be expended on Statewide and regional library services. The State Librarian shall also determine the amounts to be allocated to base funding and program development funding for regional library services.

(b) Each year the State Librarian shall identify the services to be provided on a Statewide basis and expend the amount needed for this purpose.

(c) Each year the State Librarian shall determine the amount required to provide base funds to each regional library cooperative according to the following formula:

1.-3. (No change in text.)

(d) Each year the State Librarian shall determine the amount required to provide program development funds to each regional library cooperative in accordance with requirements established by the State Librarian. However, no program development funding shall be awarded unless each regional library cooperative has received base funds.

(e) No less than 40 percent of the funds made available for the regional library cooperative shall be allocated in the annual operating budget of a regional library cooperative, and expended as necessary, to reimburse regional contract libraries for services to residents of the library region.

6:70-1.18 Appeals and hearing process

Appeals arising from any action of the State Librarian in administering the rules of this chapter may be requested, and an opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24, and 18A:6-27. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Long-Term Care Insurance

Adopted New Rules: N.J.A.C. 11:4-34

Proposed: July 17, 1989 at 21 N.J.R. 1964(a).

Adopted: October 16, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: October 16, 1989 as R.1989 d.571, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1 and 17:1C-6(e).

Effective Date: November 6, 1989.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: Proposed N.J.A.C. 11:4-34.2 and 34.13 are interpreted to provide the long-term care policies approved and sold prior to the effective date of the new rules will be appropriately "grandfathered" if they are not in strict compliance with the new rules.

RESPONSE: These rules will not apply to any policies in force prior to the effective date. All policy forms previously filed must be brought into compliance prior to any new sales.

COMMENT: The New Jersey Department of Health's definitions for "long-term care facility" and "home health agency" should be included in proposed N.J.A.C. 11:4-34.3.

RESPONSE: The Department sees no need to include these definitions since the defined terms do not appear in the proposed rules.

COMMENT: The definition of "group long-term care insurance" in proposed N.J.A.C. 11:4-34.3 is too restrictive. N.J.S.A. 17B:27-27 relating to group health and blanket insurance provides an appropriate standard for a group or association for which long-term care policies can be issued and should be included as a referenced statutory section.

RESPONSE: The Department agrees and the definition of "group long-term care insurance" is amended accordingly.

COMMENT: The Department should provide examples as to what types of groups are anticipated to fall within the meaning of paragraph 2 of the definition of "group long-term care insurance" in proposed N.J.A.C. 11:4-34.3.

RESPONSE: The Department has not predetermined what groups would or would not be satisfactory pursuant to the provisions of paragraph 2.

COMMENT: The words "or rider" should be inserted after "Long-term care insurance shall not include any insurance policy" at the beginning of the definition of "long-term care insurance" in proposed N.J.A.C. 11:4-34.3 to clarify the types of coverage not included as long-term care insurance.

RESPONSE: The Department agrees and the definition of "long-term care insurance" is amended accordingly.

COMMENT: The definition of "long-term care insurance" should be changed to allow for coverage of 12 months in length for any one episode or 36 months over an insured's lifetime should they have multiple confinements for different reasons.

RESPONSE: This approach would conflict with the 24-month requirement in the proposed definition of "long-term care insurance." In effect, it substitutes values of benefits for length of coverage. Providing only 12 months of institutionalization benefits per spell of illness or episode effectively limits coverage for long-term institutionalization to an unacceptable degree. It is the Department's intention to have long-term care products provide coverage for truly catastrophic situations. A limit of 12 months of institutional coverage per episode would defeat this purpose. Interestingly, substitution of benefits for length of coverage in Medicare supplements is not permitted.

COMMENT: Insurers who offer multiple benefit periods should be given the opportunity to allow the applicant to choose the benefit period which suits their needs and allow insurers to include a one-year benefit as an option. The NAIC, after considerable debate and review, decided that the definition of long-term care insurance should remain as it was originally written: that is, long-term care policies may only be marketed if they provide benefits of at least 12 consecutive months. Various studies are cited in support of this recommendation. This commenter, an insurer, concludes that the incentive for their agents would be to sell the higher benefit periods since the yearly premium is higher. They also note that their experience in the more rural areas of the country has determined that the one-year benefit period is appropriate.

RESPONSE: A minimum benefit period of 24 months is supported by studies available to the Department including one by the National Center of Health Statistics which concludes that the average length of stay is two and a half years for those remaining in nursing homes for more than three months. The contention that coverage for one year in rural areas is appropriate is not entirely persuasive. Residents of rural communities do not have the same long-term care needs as residents of urban communities and New Jersey is primarily an urban state. A farm family is more likely to be able to provide long-term care at home than a professional couple occupying a condominium in an urban area. The purpose of long-term care insurance is to protect against the catastrophic costs associated with long-term care. A minimum of two years of coverage provides a level of benefits associated with true long-term care that the majority of people would ever need and that unquestionably represents a financially catastrophic situation. However, there is nothing in the proposed rules which would prohibit an insurer from issuing a 12-month program. They simply would not be able to refer to it as "long-term care insurance."

COMMENT: The use of the term "medically necessary" in the definition of "long-term care insurance" means that a physician's authorization will be required to provide the stated services. There is no provision in this section for authorization by less expensive and equally qualified health care professionals. The registered professional nurse is highly qualified to plan for many of the services listed in the definition. Physicians are sometimes unaware of what services are necessary on a long-term basis. The definition should be reworded to allow the registered professional nurse to authorize care for patients who require certain health care services.

RESPONSE: The determination of medical necessity for long-term care services under Medicaid must be made by a physician. Certified home health agencies in New Jersey require a physician's certification of the medical necessity of care provided to patients at home. Home health agencies assign registered nurses to conduct a patient care assessment. The registered nurses determine treatment needs and establish a care plan. A physician reviews the assessment and must certify it. Certification of medical necessity is considered a diagnostic statement, and licensed physicians are currently the only health care providers permitted to diagnose.

COMMENT: Two commenters maintained that the proposed definition of "long-term care insurance" should not exclude life insurance policies and riders that accelerate the death benefit of the life policy to pay long-term care benefits. The benefits paid under acceleration clauses or riders would conform to the NAIC standards expressed in the New Jersey proposal. If the insured were to die without needing long-term care, the face amount of the death benefits would be paid to his or her beneficiary. Life policies with accelerated benefit clauses or riders serve an important public policy goal and, properly regulated, are not inimical to the public interest.

RESPONSE: There are a number of benefits that insurers are developing for use with life insurance. These benefits include long-term care benefits, convalescent care benefits, nursing home benefits, and accelerated death benefits that are payable upon the diagnosis of a terminal disease. The NAIC refers to these benefits as "non-life life benefits". The Department's position is that these types of benefits do not fall within the scope of life insurance as defined at N.J.S.A. 17B:17-3. Therefore, they are disapproved for use with life insurance contracts.

COMMENT: Two commenters object to the extraterritorial nature of proposed N.J.A.C. 11:4-34.4 and find comparable NAIC language to be preferable. After the lead-in phrase, "No group long-term care insurance coverage may be offered to a resident of this State under a group policy issued in another state to a group described in paragraph 2 of the definition of 'group long-term care insurance' ", one commenter suggests this language: "unless this State or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State has made a determination that such requirements have been met"; whereas the second commenter suggests this language: "unless it has been submitted to and filed by the Commissioner of this State or another state having statutory authority and regulatory long-term care insurance requirements substantially similar to the laws and regulations of this State."

RESPONSE: The suggested changes to proposed N.J.A.C. 11:4-34.4 concerning extraterritorial authority would result in a status quo regulatory approach to group policies lawfully issued in another state. The Department's intent in establishing filing requirements for group long-term care insurance coverage is clearly to strengthen existing regulatory loopholes and eliminate the need for reliance on the actions (or non-actions) of other states. For purposes of clarification, however, the Department has decided to insert the NAIC language "the group policy or certificate thereunder" in place of the word "it" which follows the word "unless".

COMMENT: The word "may", appearing in the last sentence of proposed N.J.A.C. 11:4-34.5(a)4, should be changed to "shall". Unlicensed or uncertified providers are not legal in New Jersey. Use of the word "may" in the proposed rules could be construed to allow such illegal operations which the Department of Health and the Department of Community Affairs spend great efforts locating and closing down.

RESPONSE: The Department agrees and the change is made accordingly.

COMMENT: Proposed N.J.A.C. 11:4-34.6(a)3 prohibits a long-term care policy from providing "significantly more coverage for skilled care in a facility than coverage for lower levels of care." The phrase "significantly more coverage" needs to be more precise. Without a better explanation of what "significantly more" means, an insurer will not be able to design a product in which compliance is assured.

RESPONSE: The intention of this provision is to prohibit a type of policy which would offer a benefit which is illusory to the long-term care risk. The language in question is directly attributable to the NAIC model and allows for flexibility within the limitation of reasonableness.

COMMENT: Two commenters expressed concern that proposed N.J.A.C. 11:4-34.6(a)4 prohibits prior institutionalization as a condition, limit or restriction of eligibility for benefits contrary to NAIC model language. The first commenter urges that New Jersey adopt the NAIC position "by allowing non-institutional benefits to employ a gatekeeper of no more than 30 days of prior institutional care." This commenter, an insurer, asserts that if the rule is adopted as proposed, it would be required to delete any non-institutional benefit provisions from its coverage. In such a case, its New Jersey resident policyholders would be the only individuals in the United States who could purchase the company's long-term care policy without being able to avail themselves of these non-institutional benefits.

The second commenter recommended that optional plans be available to include a zero hospital option or a three-day hospital requirement. In many cases, nursing home confinements will occur after a period of time in the hospital since long-term care policies are designed to pay people as a result of an illness or an accident. Medicare, as of January 1, 1989, eliminated the three-day hospital requirement. Nonetheless, Medicare is still insisting that the care in a nursing facility must be skilled/rehabilitative in nature. Therefore, since Medicare is requiring daily skilled care, normally a person will first go to the hospital prior to entering a nursing facility. There are exceptions to this, for example, the Alzheimer's patient or a person with senile dementia, but the choice between a plan with a hospital requirement or a plan without one should not be completely taken away from the applicant. If the Department insists on eliminating any hospital requirement before entrance to a nursing facility, the cost of insurance to residents of New Jersey will be significantly increased, especially at the older ages.

RESPONSE: A prior hospitalization requirement to receive nursing home benefits was originally used as a screening mechanism to ensure "medical necessity" of care. The requirement was consistent with Medicare's former criterion for skilled nursing facility reimbursement. Insurers used it to avoid adverse selection. As pointed out, the Medicare Catastrophic Coverage Act eliminated the prior hospitalization requirement. Most insurers have also eliminated the requirement since other screens can be used: deductible periods, managed care, limitations in activities of daily living (ADLs), etc. Statistics indicate that anywhere from 45 to 73 percent of all nursing home admissions do not have a prior hospital stay. Other statistics indicate that more than half of nursing home admissions are directly to intermediate or custodial levels of care without having received prior hospitalization or skilled level nursing home care. Requiring prior institutionalization or a higher level of care is costly. Home health care, for example, typically costs less than institutional nursing home care. And custodial level nursing home care is less costly than skilled level nursing home care. It is not cost effective to the insurer in terms of claims costs or to the insured in terms of higher premiums to cover these costs to require prior hospitalization or higher levels of nursing home care if lower levels of care are all that are necessary. Prior or higher institutionalization requirements force physicians to recommend patients to higher levels of care than are necessary simply so patients can ultimately qualify for levels of care that are actually needed.

COMMENT: Two insurers objected to the proposed preexisting condition limitations language stating that proposed N.J.A.C. 11:4-34.6(b) extends an insurer's exposure, encourages adverse selection and works against public policy in that it forces the insurer to choose not to insure at all where it otherwise might be able to offer limited protection. Both insurers recommend new language to include conditions that could have been diagnosed or treated or for which medical advice or treatment could have been recommended or received during the six-month period preceding coverage.

RESPONSE: The Department agrees and has amended the provision in a manner that most nearly conforms to the preexisting condition language in N.J.A.C. 11:4-16.4(a)3 which sets forth minimum standards for individual health insurance.

COMMENT: Two commenters expressed concern over the loss ratio for long-term care insurance. One commenter recommended that it should be stated separately from the loss ratio for other insurance, recognizing that the product is still new and in the developmental stages. The loss ratios stated in N.J.A.C. 11:4-18.5 are: 65 percent for "over 65 coverage"; and 55 percent for insurance not listed which is guaranteed renewable for stated reasons only. It is difficult to determine which loss ratio must be used for long-term care insurance since such insurance must be guaranteed renewable and the product is solicited to ages lower than 65, even though most applicants are presently in the "over age 65" category. It is therefore recommended that the 60 percent loss ratio, as contained in the NAIC model, be adopted. This loss ratio has not only been found acceptable by a number of states, but would also be a middle point between the two loss ratios stated above. This loss ratio more accurately represents the eventual mixture between ages. It also takes into consideration the acquisition costs for this product. The acquisition cost is greater because of the cost of the sale. Long-term care insurance is one of the most complicated sales. Because the public is just now becoming aware of the importance of long-term care insurance, the agent must

invest more time in the sale of such coverage. The use of the 60 percent loss ratio would also allow a greater number of policies to be offered to New Jersey residents.

The second commenter asserts that some of the reasons why insurers are reluctant to do business in New Jersey are the combination of the 65 percent loss ratio requirement and the nine percent after tax interest assumption, when calculating premiums, plus over regulation by the Department. Because of this reluctance, older New Jersey residents suffer due to a lack of competition and the lack of choice. The 65 percent loss ratio is one of the harshest in the United States. This commenter asks rhetorically why New Jersey's sister states do not follow suit stating as the reason that most states are aware that it is virtually impossible to project long-term care claims five, 10, 15 or 20 years down the road and that insurance departments in other states are willing to give the insurance companies more leeway with regard to the loss ratio requirement. It is asserted that the 65 percent loss ratio requirement combined with the nine percent after tax interest assumption, when calculating premiums, results in a 70 percent loss ratio requirement in New Jersey that is unacceptable to many companies marketing long-term care coverage.

RESPONSE: New Jersey law requires that premiums be reasonably related to benefits. The requirement of reasonability is met when a policy form's loss ratio equals or exceeds a statutorially prescribed minimum loss ratio.

For over 65 coverage, except for accident only coverage, the minimum prescribed loss ratio is 65 percent, whether the coverage is limited in benefit amount or in area of indemnification or in both amount and area, so long as losses due to both accident and sickness are covered. For under 65 coverage, lower minimum loss ratios are prescribed, depending on a policy's renewability provision. For guaranteed policies, for example, the lower loss ratio is 55 percent.

New Jersey's minimum 65 percent loss ratio differs from that of most other states in two important respects. First, the 65 percent is based on the insured's attained age and not on the insured's issue age as in the other states. An issue age basis results in an illogical discontinuity between minimum loss ratios for issue age under 65 and for issue ages 65 and over. For example, all else equal, it is unfair that a person age 63 at issue would receive only 55 cents in benefits on every premium dollar on a guaranteed renewable policy while another person age 65 at issue would receive 65 cents or nearly 20 percent more. The attained age basis avoids the discontinuity through a logical grading of the loss ratios for issue ages under 65 to the loss ratio (65 percent) for issue ages 65 and over. Second, public policy on reasonability of the relationship between benefits and premiums has been set in New Jersey at 65 percent for over age 65 coverage and not at some lower percentage as in the other states. All long-term care policies heretofore submitted for approval in New Jersey have had to meet New Jersey's current loss ratio requirements.

When a policy is funded by a level premium payable for life and when the policy provides coverage both for ages under 65 and for ages 65 and over, the determination of the minimum acceptable loss ratio when age at coverage is the loss ratio discriminant, as in New Jersey, rather than age at issue as in other states, is necessarily more difficult. But the determination itself is not that difficult, as shown below:

For a level premium payable over the life of an insured whose issue age is under age 65, an acceptable interpretation of N.J.A.C. 11:4-18.5 to the Department is that the anticipated loss ratio cannot be less than that resulting from:

$$(A-B-C)/A$$

where A = the present value at policy issue of one dollar of annualized premium;

B = the present value at policy issue of the product of R and one dollar of annualized premium payable for policy years from policy issue to attained age 65;

C = the present value at policy issue of the product of .35 and one dollar of annualized premium payable for policy years after attained age 64;

and where R = the complement of the applicable loss ratio factor for coverage before attained age 65, with complements of .50 for noncancellable insurance, .45 for guaranteed renewable insurance and .40 for collectively renewable insurance.

With the preceding as a backdrop, the specific points of the commenters are addressed.

1. Loss ratio standards for long-term care products should be separate from the standards for other products because such products are new and developing.

Products addressing institutional and nursing care of the elderly have been around for some time. Only in the last five to 10 years has the market for such products and the corresponding political attention increased because of the changes which the social structure has undergone. Heretofore, long-term care products have been subject to the same standards as other health insurance policies. Moreover, no compelling reasons exist why those standards should now change. Premiums for long-term care policies are not guaranteed, thereby providing insurers a necessary safeguard (that is, premium increases) to financial losses if developing experience exceeds that which was anticipated. Also, insurers are not required to issue expense incurred coverage without upper limitations on benefit payments, thus providing insurers further protection.

2. Since the loss ratios stated in N.J.A.C. 11:4-18.5 are 65 percent for over age 65 coverage and some lesser percent for under age 65 coverage, depending on a policy's renewability provision, it is difficult to determine which loss ratio should be used. Therefore, use of a 60 percent loss ratio, which is contained in the NAIC model and has been adopted by other states and which averages the 65 percent for over age 65 coverage and the 55 percent for under age 65 coverage on guaranteed renewable policies, is recommended for adoption.

First of all, the recommendation ignores that reasonability of premiums to benefits in New Jersey for over age 65 health insurance coverage in general has been set at a minimum loss ratio of 65 percent, in spite of NAIC models and in spite of lower minimum loss ratios in other states. The single most important effect which a statutorially prescribed minimum loss ratio has on an insurer's premium structure is the limitation which the loss ratio imposes on an insurer's acquisition expenses for commissions and overrides. Most long-term care policies will be sold at the older issue ages for which premiums are quite significant, leaving ample margin for sales compensation. At the youngest issue ages, a minimum loss ratio of 55 percent results under N.J.A.C. 11:4-18.5 because of the significant impact of discounting, thereby leaving ample additional margins on a percentage basis for sales compensation. For ages between the youngest ages at issue and age 65 at issue, the minimum loss ratio grades naturally and smoothly from 55 percent to 65 percent.

The recommendation reflects a misunderstanding of N.J.A.C. 11:4-18.5 when a level premium payable over an insured's life transcends ages both over and under age 65. One interpretation of N.J.A.C. 11:4-18.5, acceptable to the Department, is set forth in the preceding general explanation. Nonetheless, because of the difficulties insurers have had understanding N.J.A.C. 11:4-18.5, the Department is proposing a technical amendment to the section which will clarify this issue.

3. A 60 percent minimum loss ratio is recommended because long-term care insurance is a complicated sale and therefore additional margin is required to compensate the agent for his or her effort.

At the older ages, adequate margin (absolutely) exists to compensate agents because the premiums are quite significant. At the lower ages, additional margins (relatively) are available to compensate agents for their efforts (see the response to the preceding comment). Nonetheless, the Department does not agree that long-term care insurance is a complicated sale. Long-term care benefits are easier to explain than medical expense benefits generally and Medicare supplement benefits specifically. A correct statement is that long-term care insurance is a difficult sale because of buyer resistance which results from a lack of general appreciation among the buying public for the product. Among the aged, a public solution to the problem of funding long-term care is sought.

4. Insurers are reluctant to do business in New Jersey because (i) a 65 percent loss ratio is required; (ii) a nine percent interest rate must be used in calculating the anticipated loss ratio; and (iii) health insurance in New Jersey is over regulated.

As noted previously, a minimum 65 percent loss ratio for all issue ages is not required. At the youngest issue ages, a minimum loss ratio of 55 percent is required. At issue ages 65 and over, a minimum loss ratio of 65 percent is required. For interim issue ages, a minimum loss ratio which grades naturally and smoothly from 55 percent to 65 percent as the issue age increases is required. The grading results from the stipulation in N.J.A.C. 11:4-18.5 that the "loss ratio" is a function of the attained age, not the issue age.

New Jersey rules do not require an insurer to use per se a nine percent interest rate in the calculation of the loss ratio. The requirement for the interest rate assumption in calculating the anticipated loss ratio expected on a policy form (which cannot be less than the statutorially prescribed minimum loss ratio) is set forth in N.J.A.C. 11:4-18.3. What the rule

requires is the use of realistic assumptions for the interest rates, since use of non-realistic rates would result in calculation of a pseudo anticipated loss ratio. What the rule specifically requires is: "realistic rates of interest which are determined before federal taxes but after investment expenses."

The assertion of over regulation is vacuous. What regulation exists in New Jersey reflects New Jersey's public policy as enacted by the Legislature. Nonetheless, in New Jersey unlike in other states, policies not meeting the minimum benefit and renewability standards of the long-term care regulation may be issued; they simply may not be referred to as long-term care policies, Moreover, all states have or will have adopted minimum loss ratio standards. Given these circumstances, it is easy to see why the assertion of "over regulation" is vacuous.

Insurers do not require additional leeway in the minimum loss ratio requirements (see the response to comment one preceding). Furthermore, when insurers have such leeway, they invariably and unnecessarily pass the additional margins through to selling agents as additional first year commissions, an action which contradicts the alleged need for additional margins because of the uncertainty of the risk. These same insurers frequently vest commissions, an action also contradictory to the uncertainty argument.

COMMENT: Proposed N.J.A.C. 11:4-34.6(c) includes New Jersey's minimum standards regulation for individual health insurance (N.J.A.C. 11:4-16) by reference. That section requires certain forms be provided to persons eligible for Medicare. Such forms are the buyer's guide provided by the Department, a chart entitled "Medicare Deductibles and Copayments for 1989", and a pamphlet entitled "Information Concerning Changes to the Medicare Program Effective January 1, 1989". The section requires unique forms to be developed for use in New Jersey only. It also puts insurers in the situation of having to obtain the negatives for the printing of the buyer's guide from the Department and requires insurers to print the forms in the exact manner indicated by the Department. This is not only costly for insurers, but also puts the Department in the position of having to update the forms immediately to reflect necessary changes. The use of additional unique forms in New Jersey will increase the acquisition costs, which in turn creates pressure for a lower anticipated loss ratio. It is recommended that the required buyer's guide be in the form of the most current pamphlet developed jointly by the NAIC and the Health Care Financing Administration and entitled "Guide to Health Insurance for People with Medicare." This form has been found acceptable by almost every state. It is updated annually to reflect changes. By using this form, the responsibility for updating the pamphlets is transferred from the Department to the organizations developing the form and the insurers. With the use of this pamphlet, additional forms should not be needed.

RESPONSE: The Department is preparing an appropriate buyer's guide for long-term care insurance. Insurers will be advised by bulletin when it is ready for dissemination. As stated in proposed N.J.A.C. 11:4-34.6(c), none of the requirements of the minimum standards provisions set forth in N.J.A.C. 11:4-16 which are inconsistent with these rules shall apply to long-term care insurance.

COMMENT: The exclusions set forth in proposed N.J.A.C. 11:4-34.6(g)1 through 4 raise certain moral and ethical questions. For example, alcoholism is a disease and people who are alcoholic are among the neediest in the population. If these people are excluded, why not exclude people who smoke or people who are chronically obese? Is not the act of excluding an alcoholic, a drug user, or someone who is mentally ill, an act of discrimination? In addition, it should be noted that for several years the Veterans Administration has been cutting back on payments for long-term care, and it has very strict limitations for the payment of long-term care benefits. Veterans should not be excluded from long-term care coverage.

RESPONSE: New Jersey's individual and group health care insurance laws, at N.J.S.A. 17B:26-2.1 and 17B:27-46.2 respectively, mandate that group and individual contracts providing hospital and medical expense benefits shall include benefits for the treatment of alcoholism to the same extent as benefits for any other sickness under the policy. This mandate, however, does not apply to most long-term care policies which are structured on a non-expense incurred basis. The Department is not persuaded that rehabilitative benefits for alcoholism or drug abuse are necessarily appropriate for long-term care policies. In fact, the Department's position is that long-term care is unique and distinct from rehabilitative care for alcoholism or drug abuse.

COMMENT: Mental health services are wrongly excluded from the definition of "long-term care insurance" in N.J.A.C. 11:4-34.3 and insurers are wrongly authorized to totally exclude coverage for mental or nervous disorders at N.J.A.C. 11:4-34.6(g)2.

RESPONSE: The definition of "long-term care insurance" at proposed N.J.A.C. 11:4-34.3 prohibits insurers from selling a policy which primarily provides mental health or substance abuse coverage. This prohibition is consistent with the Department's long-standing position not to allow policies which provide coverage for specified diseases or for procedures or treatments which are limited to specified diseases (N.J.A.C. 11:4-16.5(a)). However, the definition of long-term care insurance does not prohibit insurers from providing long-term care benefits for mental illness as long as benefits are provided for other diseases or illnesses not specifically excluded. The exclusion for mental or nervous disorders at proposed N.J.A.C. 11:4-34.6(g)2 is not mandatory. Insurers may offer long-term care benefits for mental or nervous disorders. The New Jersey Legislature's continued failure to enact legislation mandating mental health and/or substance abuse coverage must be considered in support of the Department's position to allow such an exclusion on an optional basis.

COMMENT: Proposed N.J.A.C. 11:4-34.6(g)2 should be amended to include, after the reference to Alzheimer's disease, "or any other organic brain disease such as senile dementia".

RESPONSE: The Department agrees and the change is made accordingly. The newer long-term care policies include coverage not only for Alzheimer's but also for senile dementia since the latter is a result of the hardening of the arteries, a demonstrable organic problem.

COMMENT: Proposed N.J.A.C. 11:4-34.6(h) regarding extension of benefits after termination would, in effect, allow an insured to create his or her own waiver of premium payment beginning with his or her first day of institutionalization. Reasonable waiver of premium features, as expressed in policies, are an appropriate mechanism in the long-term care insurance marketplace.

RESPONSE: Extension of benefits would take effect regardless of whether the policy stayed in force or not; whereas waiver of premium is generally applicable only if the policy stays in force. Furthermore, the extension of benefits provision set forth in the proposed rule parallels that at N.J.A.C. 11:4-16.6(c)22 for all individual health policies sold in this State.

COMMENT: A problem arises with regard to continuation of group coverage. When, for example, a long-term care policy is tailored for use in connection with a particular continuing care retirement community, continuation of the same coverage cannot be maintained when an individual leaves the group. Proposed N.J.A.C. 11:4-34.7(b) should be amended along the lines of the NAIC June, 1989 revisions to permit the continuation benefits to be "substantially equivalent" with the determination as to what is "substantially equivalent" left to the Commissioner. The specific language proposed, which would be added at the end of subsection (b), follows:

Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The Commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

RESPONSE: The Department chooses not to implement the suggested revision. The Department has not filed health insurance contracts written by commercial insurers which utilize preferred provider arrangements, etc., except under very specific conditions. If the Department were to accept the revision, insurers would infer that preferred provider arrangements, etc., in connection with long-term care insurance, are acceptable. In any event, the expressed concern may be alleviated by the issuance of conversion coverage.

The Department notes, however, that proposed N.J.A.C. 11:4-34.7(d) mandates conversion to an individual policy of long-term care insurance. An insurer recently submitted to the Department a group long-term care insurance policy which provided for conversion to another group policy. The Department sees no need to limit conversions to only individual coverage and therefore removes the limitation that conversion be to an individual policy.

COMMENT: Some of the conversion of group coverage requirements in proposed N.J.A.C. 11:4-34.7 would be administratively onerous and counter to individual customer needs. Specifically, subsection (d) requires converted policies to include benefits substantially similar to the previous group policy. However, the mix and nature of benefits under a group

policy could very easily be prohibitively expensive on an individual basis. Additionally, group policies typically provide groups with coverages that feature a variety of options which are administratively impractical to offer to individual customers. Requiring converted policies to include group options would result in customized individual policies not supported by the economies of scale which make such policies practical to offer on a group basis.

RESPONSE: The Department is not convinced. Expenses attributable to individual conversion policies are often mitigated by charge backs to the group from which conversion occurs. Also, commissions and other expenses on group conversions generally do not approach the level of other individual policies. In any event, the Department's primary concern is the availability of continuous coverage—whether it be in the form of individual conversion policies or continued enrollment under the group policy. Insurers should consider maintaining the coverage under the group policy, as permitted by proposed N.J.A.C. 11:4-34.7, as a low cost alternative to providing conversion to individual policies.

COMMENT: Requirements regarding the insured's age and calculation of premiums under proposed N.J.A.C. 11:4-34.7(f) and (g) suggest that the following scenario could ensue:

John Doe is 30 years old when his employer purchases group long-term care coverage from Insurer ABC. After 30 years have elapsed, John's employer replaces its long-term care coverage with a similar policy issued by Insurer XYZ. Two years later, when John is 62 years old, he converts to an individual policy. According to the regulations, the conversion policy issued by Insurer XYZ must be rated as if John were 30 years old.

Therefore, many converted policies would have premium rates which have no relation to actual risk. Further, insurers would be discouraged from accepting groups which previously had long-term care coverage with another insurer. The task of tracking the age of an individual at the time of initial long-term care coverage is another administrative uncertainty.

RESPONSE: The language of proposed N.J.A.C. 11:4-34.7(f) was the subject of considerable debate among interested parties including insurance industry representatives prior to adoption by the NAIC in December, 1988. Obviously, the result favors the consumer. The Department is sympathetic with the concerns expressed but is reluctant to depart from the NAIC language in this instance.

COMMENT: One commenter states that the outline of coverage requirements in proposed N.J.A.C. 11:4-34.11 should be redone so as to be more concise, precise and compact. The proposed language is so wordy as to lose its effectiveness. Older people are not likely to take the time or have the patience to read documents that are very lengthy or wordy. By contrast another commenter, an insurer, applauds the Department's efforts in adopting the NAIC model outline of coverage, stating that it should greatly simplify the filing process.

RESPONSE: The Department has decided to retain the basic format and language of the NAIC outline of coverage.

COMMENT: Subparagraphs 6iii, 7ii and 7iii of proposed N.J.A.C. 11:4-34.11(f) relating to outline of coverage should be deleted. This commenter, an insurer, believes that due to the complexity of their screen tests, the explanation required by subparagraph 6iii would serve to confuse more than help. Such an explanation would be difficult and certainly not brief. They feel that current Department supervision on insurance practices is a sufficient safeguard in these matters. With regard to subparagraphs 7ii and 7iii, this commenter maintains that a list of non-eligible facilities, providers and levels of care is limitless and that there is no reasonable way to comply with such a provision.

RESPONSE: The Department disagrees. Policies and outlines of coverage disclose in the exclusions section those facilities and services ineligible for coverage (for example, rest homes, homes for the aged, government facilities, care provided by a spouse, child, sibling, parent, etc.). It is very important for the consumer to be provided with information concerning what screens are necessary to receive benefits. The purpose of an outline of coverage is to disclose to interested buyers an easy to understand explanation of what a policy will do and what it won't do. If subparagraph 6iii were to be deleted, the most important explanation would be lost. It is not difficult, for example, to provide the following in an outline of coverage:

Skilled Nursing Care

Benefits—daily limit for each day in a State licensed skilled nursing facility until lifetime maximum is reached or until skilled care is no longer needed.

Requirements—initial waiting period; physician must certify medical necessity of skilled care.

Home Health Care

Benefits—half of daily nursing home limit until lifetime maximum is reached or home health care is no longer required.

Requirements—initial waiting period; physician must certify medical necessity and inability to perform at least three activities of daily living. No prior institutionalization required.

COMMENT: Proposed N.J.A.C. 11:4-34.13 should be clarified or reworded. The dates do not provide adequate time for an insurer to draft and submit or for the Department to review any policy changes necessary to be in compliance. It is suggested that the latter problem could be resolved by making the finalized version of the new rules effective six months following publication.

RESPONSE: The section is amended to allow insurers a sufficient period of time in which to bring forms into compliance. The Department does not agree with the suggestion to postpone the operative date of the new rules to six months following adoption. If the new rules do not impact policies currently in force, then there should be little disruption in the marketplace. As indicated in the Summary statement to the proposed rules, at most six individual long-term care policies and a few group contracts will be withdrawn from the market.

COMMENT: Proposed N.J.A.C. 11:4-34.13 should contain some time frame for approval or non-approval of proposed policies by the Department so that applicants will know how long the process will take.

RESPONSE: Time frames are set forth in the current filing provisions of the Life and Health Insurance Code, specifically N.J.S.A. 17B:26-1. The Department cannot take responsibility for the commitment of insurers to satisfy the requirements necessary to secure final approval.

Changes made by the Department upon its own initiative include technical changes to the following sections to correct printing errors:

N.J.A.C. 11:4-34.1, 34.3, 34.4, 34.6(a)3 and (b), 34.8(c), 34.9(b), 34.10(a)3, 34.11(f)4i and 34.11(f)10.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 34. LONG-TERM CARE INSURANCE

11:*[3]* ***4***-34.1 Purpose

The purpose of this subchapter is to implement the insurance laws of this State, to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

11:4-34.2 Applicability and scope

Except as otherwise specifically provided, this subchapter applies to all long-term care insurance policies delivered or issued for delivery in this State on or after the effective date hereof, by insurers; fraternal benefit societies, nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

11:4-34.3 Definitions

Unless the context requires otherwise, the definitions in this section shall apply throughout this subchapter.

"Applicant" means:

1. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits, and

2. In the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate" means, for the purposes of these rules, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

"Commissioner" means the Commissioner of Insurance.

"Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this State and issued to:

1. A group conforming to one of the descriptions set forth in N.J.S.A. 17B:27-2 to N.J.S.A. ***17B:***27-8 inclusive ***or N.J.S.A. 17B:27-27***.

2. A group other than as described in paragraph 1, subject to a finding by the Commissioner that:

i. The issuance of the group policy is not contrary to the best interests of the public;

ii. The issuance of the group policy would result in economies of acquisition or administration; and

iii. The benefits are reasonable in relation to the premiums charged.

*"*Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide benefits for not less than 24 consecutive months for such covered person on an expense incurred, indemnity, prepaid or other basis; for one or more medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations or any similar organization. Long-term care insurance shall not include any insurance policy **or rider*** which is offered primarily to provide life insurance coverage, term of care coverage of less than 24 months, basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, mental health or substance abuse coverage, or limited benefit health coverage.

"Policy" means, for the purposes of these rules, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery*[,]* in this State by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization or any similar organization.

11:4-34.4 Filing requirement

No group long-term care insurance coverage may be offered to a resident of this State under a group policy issued in another state to a group described in paragraph 2 of the definition of "group long-term care insurance" (N.J.A.C. 11:4-34.3), unless *[it]* ***the group policy or certificate thereunder*** has been submitted to and filed by the Commissioner*[,]* in accordance with the laws and regulations of this State.

11:4-34.5 Policy definitions

(a) No long-term care insurance policy delivered or issued for delivery in this State shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements.

1. "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

2. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disorder.

3. "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

4. All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition *[may]* ***shall*** require that the provider be appropriately licensed or certified.

11:4-34.6 Policy practices, provisions and prohibitions

(a) No long-term care insurance policy shall:

1. Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

2. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

3. Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care, or provide coverage that conditions eligibility for benefits for levels of care on the receipt of higher levels of care*[.]* ***; or***

4. Require prior institutionalization to condition, limit or restrict eligibility for benefits.

(b) Preexisting condition limitations in long-term care insurance policies or certificates shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition ***for which symptoms existed that would cause an ordinarily prudent person to seek diagnosis, care or treatment or*** for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage. Nothing, however, shall prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

(c) The loss ratio standards set forth in N.J.A.C. 11:4-18.5; the minimum standards provisions set forth in N.J.S.A. 17B:26-45 and N.J.A.C. 11:4-16, 17 and 18; and the reserve requirements set forth in N.J.S.A. 17B:19-5 and N.J.A.C. 11:4-6 are hereby incorporated by reference and shall apply to long-term care insurance, to the extent that such standards, provisions and requirements are not inconsistent with these rules.

(d) Individual long-term care insurance policyholders shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation shall have the right to return the policy within 30 days of its delivery and to have the premium refunded, if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(e) A certificate issued pursuant to a group long-term care insurance policy delivered or issued for delivery in this State shall include:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions and limitations contained in the policy; and

3. A statement that the group master policy determines governing contractual provisions.

(f) The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language, in accordance with the disclosure requirements of N.J.A.C. 11:4-34.8(a).

1. No such policy issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable."

2. The term "guaranteed renewable" shall be used only when the insured has the right to continue the long-term care insurance in force

by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

3. The term "noncancellable" shall be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(g) No policy shall be delivered or issued for delivery in this State as long-term care insurance, if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except in the case of the following:

1. Preexisting conditions or diseases, in accordance with (b) above and N.J.A.C. 11:4-34.8(d);

2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease ***or any other brain disease such as senile dementia***;

3. Alcoholism and drug addiction;

4. Illness, treatment or medical condition arising out of:

i. War or act of war (whether declared or undeclared);

ii. Participation in a felony, riot or insurrection;

iii. Service in the armed forces or units auxiliary thereto;

iv. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

v. Aviation (this exclusion applies only to non-fare-paying passengers); or

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

6. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(h) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization*[,]* if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(i) No policy may be advertised, marketed or offered as long-term care or nursing home insurance unless it complies with the provisions of these rules.

11:4-34.7 Continuation or conversion of group coverage

(a) Group long-term care insurance issued in this State on or after the effective date of these rules shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

(c) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of this group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(d) For the purposes of this section, "converted policy" means *[an individual]* ***a*** policy of long-term care insurance providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. If the policy from which conversion is made restricts provision of benefits and services to named providers or facilities, and the circumstances of termination make continued use of these providers or facilities impossible or impractical, the converted policy shall provide coverage on an indemnity or expense incurred basis with benefits determined by the Commissioner to be substantially equivalent to the reasonable cost of services provided by the named providers or facilities, and shall not restrict provision of benefits and services to any named providers or facilities.

(e) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

1. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

2. The terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

i. Providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

ii. The premium for which is calculated in a manner consistent with the requirements of subsection (f).

(h) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11:4-34.8 Required disclosure provisions

(a) Individual long-term care insurance policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or

at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

(c) A long-term ***care*** insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(e) A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, other than those prohibited by these rules, shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

11:4-34.9 Requirements for replacement

(a) Individual and direct response solicited long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed insurance policy is intended to replace any other accident and health or long-term care insurance policy presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods, or its agent) shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and health or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND HEALTH OR LONG-TERM CARE INSURANCE

According to [*****[(]*****your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest, to make sure you understand all the relevant factors involved in replacing your present coverage.

3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

(c) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and health or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH OR LONG-TERM CARE INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under this new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

3. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

_____
(Company Name)

11:4-34.10 Discretionary powers of the Commissioner

(a) The Commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of these rules, with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1. The modification or suspension would be in the best interest of the insureds; and

2. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

3. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

*****[i. The]***** ***the*** policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

*****[ii. The]***** ***the*** modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

11:4-34.11 Outline of coverage

(a) An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solici-

tations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. Such outline of coverage shall include:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions and limitations contained in the policy;

3. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and

4. A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

(b) The outline of coverage shall be a free-standing document, using no smaller than ten point type.

(c) The outline of coverage shall contain no material of an advertising nature.

(d) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.

(e) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(f) The format for the outline coverage shall be as follows:

[COMPANY NAME]
[ADDRESS—CITY & STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

i. [Provide a brief description of the right to return—"free look" provision of the policy.]

ii. [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

i. [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

ii. [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY.

i. [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

ii. [Institutional benefits, by skill level.]

iii. [Non-institutional benefits, by skill level.]

[Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

i. Preexisting conditions;

ii. Non-eligible facilities/provider;

iii. Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

iv. Exclusions/exceptions;

v. Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

i. That the benefit level will *not* increase over time;

ii. Any automatic benefit adjustment provisions;

iii. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

iv. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

v. And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

[i. Describe the policy renewability provisions;

ii. For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;

iii. Describe waiver of premium provisions or state that there are not such provisions;

iv. State whether or not the company has a right to change premium and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

[i. [For agents] Neither [insert company name] or its agent represent Medicare, the federal government or any state government.]

11. PREMIUM

[i. State the total annual premium for the policy;

ii. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES

[i. Indicate if medical underwriting is used;

ii. Describe other important features.]

11:4-34.12 Severability

If any provision or clause of this subchapter or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared severable.

11:4-34.13 Compliance

Approval of all forms not in compliance with this subchapter is hereby withdrawn as of *[December 1, 1989]* ***January 31, 1990***. No such form may be issued after this date unless it has been submitted to and filed by the Commissioner subsequent to *[January 1, 1990]* ***December 1, 1989***, or unless a rider approved subsequent to such date has been attached bringing such form into compliance with this subchapter.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS HEARING AID DISPENSERS EXAMINING COMMITTEE

License Renewal; Continuing Education Requirement

Adopted New Rule: N.J.A.C. 13:35-8.18

Proposed: June 19, 1989 at 21 N.J.R. 1648(a).

Adopted: September 23, 1989 by the Hearing Aid Dispensers Examining Committee, Larry Haber, President.

Filed: October 3, 1989 as R.1989 d.548, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9A-8.

Effective Date: November 6, 1989.

Expiration Date: September 21, 1994.

The Hearing Aid Dispensers Examining Committee afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:35-8.18, relating to continuing professional education as a requirement of license renewal.

The official comment period ended on July 19, 1989. Announcement of the opportunity to respond to the Committee appeared in the New Jersey Register on June 19, 1989 at 21 N.J.R. 1648(a). Announcements were also forwarded to the New Jersey Speech-Language-Hearing Association, the Camden Courier Post, the Star-Ledger, the Trenton Times and the New Jersey Guild of Hearing Aid Dispensers.

A full record of this opportunity to be heard can be inspected by contacting the Hearing Aid Dispensers Examining Committee, Room 602, 28 West State Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

Forty-eight letters were received during the official comment period. All but two were in favor of the continuing education requirement. The Committee's response to those who objected to the requirement is that the public must be assured that the qualifications of a hearing aid dispenser meet current standards. This should be accomplished by updating and refreshing a licensee's knowledge and skills on a continuing basis.

A number of commenters felt the Committee was being unduly restrictive in accepting for credit only those courses approved by the National Hearing Aid Society and those completed through an accredited college or university. These commenters recommended that the Committee also accept for credit programs offered by various audiological professional associations such as the New Jersey Speech-Language-Hearing Association. The Committee's response is that the National Hearing Aid Society is the only nationally recognized association of hearing aid dispensers and thus is the only group which is in a position and which has written criteria to evaluate continuing education courses for hearing aid dispensers. While audiology and hearing aid dispensing are closely related disciplines, many audiology courses have no bearing on hearing aid dispensing and therefore should not be entitled to continuing education credit. The Committee has clarified the intent of the proposed rule which is that the Committee will retain final decision-making authority to approve or disapprove continuing education courses.

Two commenters urged that three-credit courses completed through an accredited college or university receive continuing education credit for 30, rather than 10, course hours. The Committee's response is that it is unable to evaluate each college course claimed for credit and its relationship to hearing aid dispensing. The Committee has therefore assigned 10 continuing education course hours as a fair equivalent.

Summary of Changes Upon Adoption:

In the first sentence of N.J.A.C. 13:35-8.18(a), minor typographical errors have been corrected and the word "days," also a typographical error, has been corrected to "years." In N.J.A.C. 13:35-8.18(c), minor typographical errors have been corrected, and the words "and the Committee" added in order to clarify the fact that the Committee will make the final judgment as to the acceptability of continuing education courses.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*.

13:35-8.18 License renewal; continuing education requirement

(a) No license renewal shall be issued by the Director unless the applicant confirms on his or her renewal application*[s]* to the Hearing Aid Dispensers Examining Committee that during the two calendar *[days]* ***years*** preceding application for renewal he or she participated in courses of continuing education of the type*[s]* and number of credits specified in this section. Such continuing education is a mandatory requirement for license renewal. Licensees shall be solely responsible for obtaining and maintaining documentation on his or her completion of the required continuing education courses during the registration period. Such documentation shall be submitted to the Committee upon request, and will be surveyed on a random basis. The provisions of this subsection shall not apply to licensees renewing their licenses for the first time.

(b) Evidence of 20 documented course hours of continuing education shall be required of each applicant as a condition of biennial license renewal.

(c) The number of creditable course hours and course contents must be accepted and approved by the National Institute for Hearing Instruments Studies (NIHIS), the educational arm of the National Hearing Aid Society (NHAS), ***and the Committee*** except for courses completed through an accredited college or university. A course in hearing aid dispensing creditable by the institution toward three or more credits completed at an accredited college or university shall receive credit for 10 continuing education course hours.

(d) Acceptable continuing education courses shall be in any area which will update and refresh the clinical skills or knowledge of a hearing aid dispenser. Notwithstanding that the continuing education course meets the requirements, the Committee at its discretion may at any time examine and review any course claimed for credit. If, in the opinion of the Committee, such course does not clearly meet the requirements of this section, the course shall be disallowed for credit toward the required 20 continuing education credits.

(e) In the event that a candidate for license renewal shall complete in two years a number of hours in excess of the number of hours required by this section, the documented hours in excess of those required shall not be credited toward license renewal for subsequent years.

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MORTUARY SCIENCE

State Board of Mortuary Science Rules

Readoption: N.J.A.C. 13:36

Proposed: July 17, 1989 at 21 N.J.R. 1971(a).

Readopted: September 12, 1989, by the State Board of Mortuary Science, David M. Danaher, President.

Filed: September 27, 1989 as R.1989 d.540, **without change.**

Authority: N.J.S.A. 45:7-38.

Effective Date: September 27, 1989.
Expiration Date: September 27, 1994.

The State Board of Mortuary Science afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:36, relating to the practice of mortuary science. The official comment period ended on August 16, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 17, 1989 at 21 N.J.R. 1971(a). Announcements were also forwarded to: The Star Ledger, The Trenton Times, The New Jersey State Funeral Directors Association, and Mark Samuel Ross, Esq.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Mortuary Science, Room 513, 1100 Raymond Blvd., Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The only comment received on the proposed readoption was from Mark Samuel Ross, Esq. Mr. Ross requested the Board to consider clarification of the standard of trainee supervision required to make funeral arrangements as opposed to embalming, repeal of the advertising regulations as "unduly burdensome" and "of little or no impact," and clarification of the term "preparation" as it relates to non-invasive religious procedures. The Board's response follows:

Regarding the standard of trainee supervision, the Board, because of its summer schedule, has had insufficient time to fully consider and implement any changes in the present text. The matter will, however, be the subject of ongoing scrutiny.

As for its advertising restrictions, the Board, whose position is that the purpose of professional advertising is to inform but not mislead the public, considers the present regulations to be proper as well as necessary in order to prevent misrepresentation.

The Board has never interpreted N.J.A.C. 13:36-4.9 as prohibiting a religious group from performing any religious rituals in the preparation of remains of a decedent. It therefore believes no change in this provision is necessary.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:36.

(a)

STATE BOARD OF OPTOMETRISTS

Unlawful Advertising Practices

Adopted Amendment: N.J.A.C. 13:38-1.2

Proposed: August 21, 1989 at 21 N.J.R. 2467(a).
Adopted: September 21, 1989 by the State Board of Optometrists, Edward S. Campell, O.D., President.
Filed: October 5, 1989 as R.1989 d.552, **without change.**

Authority: N.J.S.A. 45:12-4.

Effective Date: November 6, 1989.
Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:38-1.2 General advertising practices

(a)-(i) (No change.)

(j) It shall be an unlawful advertising practice for an optometrist licensed by the New Jersey Board of Optometrists to:

1. Employ endorsements or personal testimonials attesting to the technical, optometric quality of services rendered or merchandise received;

i. A testimonial advertised shall arise from a bona fide patient-optometrist relationship.

ii. Any compensation, direct or indirect, received by a person giving a testimonial shall be disclosed by specifying the type of compensation and amount or value of compensation in the testimonial advertisement. Such disclosure shall be as visible and/or audible as the rest of the advertisement.

iii. An optometrist who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed, notarized statement and release, obtained prior to the time the testimonial is advertised, verifying the truthfulness of the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement.

2. Guarantee that services rendered will result in cures of any optometric or visual abnormality;

3. Fail to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination. Such copies or tapes shall be made available on request by the Board or its designee;

4. Fail to be able to substantiate any material claim or representation set forth in an advertisement.

(b)

LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Regulations Concerning Rentals

Adopted Amendment: N.J.A.C. 13:47-14.3

Proposed: August 7, 1989 at 21 N.J.R. 2233(a).
Adopted: October 11, 1989 by the Legalized Games of Chance Control Commission, William J. Yorke, Executive Officer.
Filed: October 16, 1989 as R.1989 d.562, **without change.**

Authority: N.J.S.A. 5:8-1 et seq. specifically 5:8-6.

Effective Date: November 6, 1989.
Expiration Date: February 2, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:47-14.3 Regulations concerning rentals

(a)-(i) (No change.)

(j) A $5.00 fee, in the form of a certified check payable to the State of New Jersey, shall be forwarded by the renter to the Commission for each occasion on which bingo games are held, pursuant to N.J.S.A. 5:8-49.7. Payment of this fee shall be made no later than the 10th day of the month immediately following the month in which payment is received for the rental or use of the premises for the conduct of playing bingo together with a statement disclosing:

1.-5. (No change.)

(k)-(r) (No change.)

(c)

NEW JERSEY RACING COMMISSION

Horse Racing

Admittance of Children to Race Track

Adopted Amendment: N.J.A.C. 13:70-3.40

Proposed: July 17, 1989 at 21 N.J.R. 1972(a).
Adopted: September 28, 1989, by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 3, 1989 as R.1989 d.547, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 6, 1989.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-3.40 Admission; age

(a) Any child under 16 years of age must be accompanied by an adult, parent or guardian to be admitted to any racetrack enclosure

as a spectator during the hours when the running of races is being conducted.

(b) No person under the age of 18 shall be permitted to wager or in any manner participate in any pari-mutuel pool or system.

(a)

NEW JERSEY RACING COMMISSION

Harness Racing
Admittance of Children to Race Track
Adopted Amendment: N.J.A.C. 13:71-5.18

Proposed: July 17, 1989 at 21 N.J.R. 1972(b).
Adopted: September 28, 1989, by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: October 3, 1989 as R.1989 d.546, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: November 6, 1989.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-5.18 Age limits

Any child under 16 years of age must be accompanied by an adult, parent or guardian to be admitted to any race track enclosure as a spectator during the hours when the running of races is being conducted. No person under the age of 18 shall be permitted to wager or in any manner participate in any pari-mutuel pool or system.

TRANSPORTATION

(b)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT
MAINTENANCE ENGINEERING
MAINTENANCE SUPPORT

Drawbridge Operations
Reimbursed Highway Safety Lighting
Adopted New Rules: N.J.A.C. 16:46-1 and 2

Proposed: August 21, 1989 at 21 N.J.R. 2468(a).
Adopted: September 24, 1989, by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: October 3, 1989 as R.1989, d.549, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-1.1 et seq.

Effective Date: November 6, 1989.
Expiration Date: November 6, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

CHAPTER 46
DRAWBRIDGE OPERATIONS AND
REIMBURSED HIGHWAY SAFETY LIGHTING

SUBCHAPTER 1. DRAWBRIDGE OPERATIONS

16:46-1.1 Opening and closing of bridges

(a) Movable bridges shall be operated in accordance with the rules and regulations of Title 33 (Navigations and Navigable Waters), Federal Register, United States Department of Transportation, Coast Guard; and the New Jersey Department of Transportation manual "Rules and Regulations—Operations of New Jersey Department of Transportation's Drawbridges".[1]

(b) A copy of the rules and regulations specified in subsection (a) of this section may be inspected at the office of the Division of Traffic Engineering and Local Aid, Department of Transportation, CN 600, 1035 Parkway Avenue, Trenton, New Jersey 08625.

[1] A copy of this manual may be inspected in the Bureau of Traffic Engineering and Safety Programs Traffic Engineering and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, CN-600, Trenton, New Jersey 08625

SUBCHAPTER 2. REIMBURSED HIGHWAY SAFETY LIGHTING

16:46-2.1 Definitions

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"Reimbursed highway safety lighting" means the commitment of State funds to counties and municipalities for the maintenance of street lighting. It shall be considered only for the potential problem locations along the State highway system such as intersections of roadways, railroad crossings, dangerous curves and headwalls.

16:46-2.2 Inquiries

All inquiries regarding reimbursed highway safety lighting shall be referred to the Bureau of Maintenance Engineering, Division of Construction and Maintenance Engineering Support.

16:46-2.3 Investigations

The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall arrange for any necessary field investigations pertaining to requests by local governments for State participation in the cost of maintaining existing or proposed highway safety lighting. The Bureau of Electrical Engineering of the Division of Traffic Engineering and Local Aid shall conduct the necessary field investigations when requested by the Bureau of Maintenance Engineering. The results of the investigation are to be forwarded to the Bureau of Maintenance Engineering. The Bureau of Maintenance Engineering shall inform the local governments of the results of all investigations and a complete file of all transactions shall be part of the Bureau of Maintenance Engineering's records.

16:46-2.4 State aid participation basis

(a) The rate of reimbursement to county and local government shall be based on the preceding fiscal year appropriations for this program and the number and type of lighting units in the program.

1. Incandescent units will not be eligible for reimbursement.

2. Lamps with a lamp lumen output greater than or equal to 7,000 lumens but less than 11,000 lumens will be reimbursed at the base rate.

3. Lamps with a lamp lumen output greater than or equal to 11,000 lumens, but less than 20,000 lumens will be reimbursed at a rate of approximately 1.7 times the base rate.

4. Lamps with a lamp lumen output greater than or equal to 20,000 lumens will be reimbursed at a rate of approximately 2.5 times the base rate.

(b) Reimbursement for each lamp shall not exceed 80 per cent of the total cost of the lighting to the county or municipality.

(c) To be eligible for reimbursement, lighting units must be at least 7,000 lumen intensity and be of the arc discharge type.

16:46-2.5 Standards

Reimbursed highway safety lighting shall conform to the standards set by the Division of Construction and Maintenance Engineering Support as to location, lamp intensity, mounting height and type of luminaries.

16:46-2.6 Approval of agreement

(a) The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall not enter into any contract obligations with utility companies on reimbursed safety lighting agreements.

(b) Upon approval of safety lighting location and lamp size, an agreement and copy of a form of resolution is prepared by the Bureau of Maintenance Engineering for execution and adoption by the local

government. One copy of the properly executed agreement is returned to the local government, indicating the number of lighting units and the amount of the State's participation in the cost of maintaining these units with the local government.

16:46-2.7 Termination of agreement

(a) If the Department decides to terminate the agreement, the Manager, Bureau of Maintenance Engineering, shall send written notice of intent to terminate to the local government. Formal Departmental action terminating the agreement shall be sent to the local government.

(b) If the local government decides to terminate this agreement, the Director, Division of Construction and Maintenance Engineering Support shall be notified in a form of resolution adopted by the local government. Formal Departmental action terminating the agreement shall be sent to the local government.

16:46-2.8 Extension of agreement

(a) Agreements shall be executed to terminate on the 31st day of December. Agreements may be extended for a period of one year upon a determination that the lighting program complies with the terms of the agreement, that conditions warrant the extension and that sufficient funds are available.

(b) An agreement and a form of resolution for the ensuing year are prepared and mailed to the participating local government on or about December 15 by the Bureau of Maintenance Engineering. The full executed agreement shall be returned by the local government to the State on or before February 15 with a duly certified copy of the resolution.

16:46-2.9 Reimbursement

(a) The State will reimburse the participating local government in conformance with the executed agreement subject to contract and quantity discount and outage allowance granted by the utility company for the number of units actually in service.

(b) Reimbursement claims shall be paid semi-annually to the participating local government upon presentation of vouchers provided by the State. The local government shall provide the following certification statement on the invoice: "This is to certify that the lighting units described in the schedule attached to our reimbursement agreements have been in operation and are expected to remain in service during this 6-month certified period."

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Notice of Administrative Correction Corporation Business Tax Receipts; Compensation for Services N.J.A.C. 18:7-8.10

Take notice that the Division of Taxation has discovered an error in the New Jersey Administrative Code at N.J.A.C. 18:7-8.10(c)1ii. The sentence, "Departures may be from New Jersey to total departures", was neither proposed nor adopted as part of this subparagraph (see 16 N.J.R. 3420(b) and 17 N.J.R. 477(a)), but appeared through error in the provision's publication in the New Jersey Administrative Code. This notice is published pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

18:7-8.10 Receipts; compensation for services

(a)-(b) (No change.)

(c) Where a lump sum is received by the taxpayer in payment for services within and without New Jersey, the amount attributable to services performed within New Jersey is to be determined on the basis of the relative values of, or amounts of time spent in the performance of those services within and without New Jersey, or by some trade or business practice and economic realities underlying the generation of the compensation for services. Full details must be submitted with the taxpayer's return.

Examples 1 and 2 (No change.)

1. Certain lump sum payments for services performed within and without New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

i. (No change.)

ii. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of departures from New Jersey to total departures. [Departures may be from New Jersey to total departures.] Departures may be weighted as to cost and value of aircraft by type where weighting would give a more fair and reasonable business allocation factor.

iii. (No change.)

(d)-(e) (No change.)

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Coordinated Expenditures

Adopted Concurrent Amendment: N.J.A.C. 19:25-15.29

Proposed: August 21, 1989 at 21 N.J.R. 2673(a).

Adopted: October 2, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: October 2, 1989 as R.1989 d.545, **without change.**

Authority: N.J.S.A. 19:44A-38 and P.L. 1989, c.4, specifically section 12.

Effective Date: October 2, 1989.

Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:25-15.29 Coordinated expenditures

(a) A communication expenditure by any person or entity, other than a gubernatorial candidate or his or her principal campaign committee, as defined in N.J.A.C. 19:25-15.3, is a contribution by such person or entity subject to the limit on a contribution to a gubernatorial candidate in N.J.S.A. 19:44A-29 and is a coordinated expenditure of the gubernatorial candidate properly allocable against the expenditure limit of the gubernatorial candidate in N.J.S.A. 19:44A-7 if:

1.-2. (No change.)

(b) A reference to a gubernatorial candidate appearing in materials paid for by non-gubernatorial candidates, as hereinafter defined, or political party committees, as defined in N.J.A.C. 19:25-1.7, will be deemed insubstantial and not subject to (a) above provided that:

1. (No change.)

2. The names or pictures of the gubernatorial and non-gubernatorial candidates appear on printed campaign materials used in connection with volunteer activities on behalf of the named or pictured non-gubernatorial candidates, such as materials consisting of buttons, pins, bumper stickers, handbills, brochures, posters, yard signs or palm cards; and

3. The materials in (b)2 above are not used in connection with any broadcasting, newspaper, magazine, billboard, or similar type of general public communication or political advertising.

(c) A reference to a gubernatorial candidate appearing in campaign literature or material circulated to voters by direct mail and paid for by non-gubernatorial candidates, as hereinafter defined, or by political party committees, as defined in N.J.A.C. 19:25-1.7, shall be deemed insubstantial and not subject to (a) above provided that:

1. The reference consists of no more than a single use of the gubernatorial candidate's name in the text, a single use of the gubernatorial candidate's name within a slate or listing of the names of gubernatorial and non-gubernatorial candidates, and a single

photograph or depiction of the gubernatorial candidate provided that a photograph or depiction of each non-gubernatorial candidate larger or of equal size to the gubernatorial candidate's photograph or depiction is included; and

2. The size of the print used to reproduce the name of the gubernatorial candidate is the same or smaller than the size of the print used for the names of the non-gubernatorial candidates; and

3. The predominant theme of the text promotes the candidacy or candidacies of the non-gubernatorial candidate or candidates and not that of the gubernatorial candidate.

(d) A reference to a gubernatorial candidate made in a telephone communication to a voter shall be deemed insubstantial and not subject to (a) above provided that:

1. The telephone communication is part of a get-out-the-vote effort of the non-gubernatorial candidate, as hereinafter defined, or of a political party committee, as defined in N.J.A.C. 19:25-1.7, conducted seven or fewer days before the gubernatorial general election; and

2. The reference to the gubernatorial candidate is limited to stating the name of the gubernatorial candidate as part of a slate or together with the names of non-gubernatorial candidates.

Redesignate (c)-(d) as (e)-(f) (No change in text.)

(g) A gubernatorial candidate determining the reasonable value to his or her candidacy of a coordinated communication pursuant to (f) above shall establish that value to the nearest five percent of the total cost of preparation and circulation. In no case shall the reasonable value be determined to be less than five percent of total cost.

(h) For the purposes of this section, the term "non-gubernatorial candidate" shall mean any candidate, other than a gubernatorial candidate, acting alone under a single campaign committee or jointly with other candidates under a multi-candidate joint campaign committee designated pursuant to N.J.S.A. 19:44A-16(h), but shall not mean any political committee, as defined in N.J.S.A. 19:44A-3(i), or shall not mean any continuing political committee, as defined in N.J.S.A. 19:44A-3(n)(2), which is not a political party committee, as defined in N.J.A.C. 19:25-1.7, or shall not mean any other corporation, partnership, incorporated or unincorporated association, or part thereof.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Worker and Community Right to Know Regulations

Readoption: N.J.A.C. 7:1G

Proposed: July 17, 1989 at 21 N.J.R. 1944(a).
Adopted: September 29, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: September 29, 1989 as R.1989 d.544, **without change.**

Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 34:5A-1 et seq., specifically N.J.S.A. 34:5A-30.

DEP Docket Number: 029-89-06.
Effective Date: September 29, 1989.
Expiration Date: September 29, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the "Department") is readopting, without change, the Worker and Community Right to Know Regulations, N.J.A.C. 7:1G. These rules cover the reporting of inventories of hazardous substances and releases of hazardous substances.

Pursuant to Executive Order No. 66 (1978), rules must be evaluated and revised or readopted every five years. The Department is in the process of studying the Worker and Community Right to Know Regulations (Right to Know rules) to determine if various changes and additions to them should be proposed. One particular area of study is the coordination, where possible, of the Right to Know rules with the requirements of the Federal Superfund Amendments and Reauthorization Act, Title III—Emergency Planning and Community Right to Know (SARA Title III), 42 U.S.C. 11001 et seq. At the time it became necessary to readopt the Right to Know rules in order for them to remain in effect, these studies were not complete. It is anticipated that the process will be completed and any changes found appropriate will be proposed as amendments to the Right to Know rules in 1990.

A public hearing on the proposed readoption was held on August 11, 1989 in Trenton, New Jersey to provide interested parties with the opportunity to present testimony. The comment period closed on August 31, 1989. The Department received written testimony from two people and one person presented comments at the public hearing.

General Comments

COMMENT: Pursuant to Executive Order No. 66(1978), the Department is to conduct a complete and periodic review of all rules every five years and revise, rescind or replace them. Further, the New Jersey Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., provides that any proposal to revise, rescind or replace a proposed or existing rule is considered a new rule and subject to the requirements of the APA. Under the APA, the Department must "afford all interested persons reasonable opportunity to submit data, views, or arguments . . . (and the) agency shall consider fully all . . . submissions."

RESPONSE: The proposed readoption of the Right to Know rules was published in the New Jersey Register on July 17, 1989 at 21 N.J.R. 1944(a). As stated in the proposal, this action was taken in recognition of Executive Order No. 66(1978). The Department requested comments in the proposal as it does with all its rules. In addition to a 45 day period for submission of written comments, a public hearing was held to allow for oral testimony. The Department appreciates and has considered all comments made by this and other commenters.

COMMENT: The proposal to readopt these rules does not meet the requirements of the New Jersey Regulatory Flexibility Act (Regulatory Flexibility Act), N.J.S.A. 52:14B-16 et seq. The Regulatory Flexibility Act requires the agency to accomplish its objectives in a manner which minimizes the adverse economic impact of the proposed rule on small businesses and to exempt small businesses from the rule or parts of the rule as long as the public health, safety, or general welfare is not endangered. The Department states that about 75 percent of employers are small businesses and therefore an exemption is not possible because it would endanger the environment, public health, and public safety, but does not explain if it considered whether existing Federal requirements protect public safety or if a partial exemption could be made. Labeling requirements and material safety data sheets (MSDSs) provided by the Occupational Safety and Health Act (OSHA), and the comprehensive provisions of SARA Title III provide ample assurance that the public will be protected and a small business exemption should be granted. At the very least, a partial exemption must be provided which includes, at a minimum, SARA Title III reporting thresholds, exempts laboratories, deletes container requirements and adopts a small quantity/consumer product exemption. The failure to provide exemptions renders the rule invalid and unenforceable.

RESPONSE: The Department has complied with the Regulatory Flexibility Act and the rules are both valid and enforceable. As recognized by the commenter, the Regulatory Flexibility Act provides that the agency is to utilize methods which accomplish the purposes of the Act while minimizing any adverse economic impact on small businesses. Where it is consistent with the objectives of the applicable Act, an exemption for small businesses is an appropriate method of minimizing the economic impact provided the public health, safety, or general welfare is not endangered. In this case, the Legislature has recognized the growing threat to the public health, safety, and welfare posed by hazardous substances in the environment, and, because of this threat, has called for the implementation of a comprehensive program for disclosure of information on hazardous substances. This program is to provide individuals with knowledge of the full range of risks they face for education and decision making purposes, and provide local health, fire, police, safety and other officials with detailed information on hazardous substances

used and stored in their communities for emergency planning, emergency response, and enforcement purposes (see N.J.S.A. 34:5A-2).

As stated in the proposal to readopt this rule, the Department has examined those businesses affected by the rule and found that an estimated 75 percent of these businesses are small businesses as defined by the Regulatory Flexibility Act. As summarized above, the intent of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., (the "Act") is to provide detailed information on the full range of risks faced. The Department has determined that to provide an exemption, either complete or partial, from reporting for 75 percent of the covered businesses would neither accomplish the objectives of the Act nor protect the public health, safety, and welfare in either day to day activities or emergency situations. Therefore, an exemption has not been provided.

While the other sources of information cited do provide some information, the large SARA reporting thresholds limit the amount of information from that source and none of the cited sources provide the extent or detail of information the Department believes to be appropriate. Container information is important in giving the Department and emergency responders a complete profile of the facility. Further, the fact that information is gathered under the New Jersey Act gives the Department the enforcement authority to ensure that all covered employers are filing appropriate surveys and that the information provided is accurate.

Research and development laboratories are exempt from reporting by the Act (see N.J.S.A. 34:5A-31). Therefore, an exemption for small business research and development laboratories is unnecessary. These facilities need only file a form provided by the Department which allows the Department to verify their appropriate categorization as a research and development laboratory.

COMMENT: Procedures for applying for an exemption for laboratories are unduly burdensome and unnecessary. Laboratories are routinely exempted entirely from laws because chemicals are generally present in small quantities, used for short periods of time, used only by highly trained and technically qualified individuals, and either labeled or used by the person who removed them from the container. Including laboratories imposes a great cost with little benefit. Their inclusion is arbitrary and an automatic exemption should be provided.

RESPONSE: The only laboratories exempted in the Act from reporting are research and development laboratories. The Act defines research and development laboratory, and the Department has developed an application process for laboratories that believe they meet the statute's definition. This process is not burdensome and is necessary for the Department to verify that the facility is a research and development laboratory. Other laboratories are not exempted. In fact, commercial testing laboratories are specifically cited as a covered employer group.

N.J.A.C. 7:1G-3 Environmental Survey

COMMENT: The "Community Right to Know Survey" was created by the Department without rulemaking and without authority from either the Act or SARA Title III. The survey is invalid and must be modified to conform with the Act as there is no basis for incorporating SARA Title III provisions into the survey. Under SARA Title III, Congress authorized the involvement of state and local authorities; however, none of this grant of authority supports the Department's actions. Specifically, SARA Title III requires reporting of "extremely hazardous substances" for emergency planning purposes. Further, companies are required to provide notice immediately after release of such a substance occurs. These requirements could not possibly be covered by the New Jersey survey and, therefore, SARA Title III does not authorize any survey provisions respecting "extremely hazardous substances." There is no basis for incorporating this list of substances into the list covered by the New Jersey survey as has been done. SARA Title III requires reporting of "toxic chemicals" on United States Environmental Protection Agency (USEPA) forms. The Department acknowledges USEPA sole authority for "toxic chemical" provisions in the survey instructions. There is no authority for inclusion of "toxic chemicals" on the list subject to the Community Right to Know Survey. Finally, SARA Title III requires reporting of "hazardous chemicals" through provision of MSDS's or a list of these chemicals. The survey instructions acknowledge that the Community Right to Know Survey does not deal with such requirements. SARA Title III provisions also require completion of a "Tier 1" survey, the requirements of which may be incorporated into the State's survey, but only if the State or local form contains identical content. The Tier 1 form and the Department's survey are not identical. The Tier 1 requires general location and quantity information on five categories of hazardous substances and provides various exemptions. The Department's form requires information on specific chemicals, with additional disclosure required and no exemption. As the requirements are not identical, there is therefore no authority for covering SARA Title III "hazardous substances" in the Department's survey. As there is thus no authority under SARA Title III and the Act only provides for workplace and environmental surveys, with no basis for incorporating SARA Title III requirements into the environmental survey, the SARA Title III requirements in the Department's survey must be deleted. For these requirements to be legitimate the Department must seek statutory authority and, after this is obtained, conduct a rulemaking under the APA.

RESPONSE: The Community Right to Know Survey is an inventory form combining the reporting requirements of the Environmental Survey, the Emergency Services Information Survey (ESIS), and SARA Title III Tier II forms. This survey allows the facility to satisfy both the requirements of the Act and SARA Title III by filing one form. The survey was developed to reduce the reporting burdens on covered employers in New Jersey by eliminating multiple survey forms. The Act does not limit what can be required on the inventory form. Therefore, the Department reviewed its own and the Federal requirements and merged them into the single survey form. Extremely hazardous substances must be reported under SARA Title III for inventory, as well as emergency planning and release notification (40 CFR 370.20 and 370.25). Many of the "toxic chemicals" required to be reported on Federal toxic release inventories are also substances subject to New Jersey or Federal inventory reporting. Only employers covered by the Act are required to report Environmental Hazardous Substance List (EHSL) and United States Department of Transportation (USDOT) substances at a zero threshold. All other substances given on the Right to Know Hazardous Substance List are provided for reference and the Federal reporting thresholds are given to assist employers in determining what must be reported under the Federal requirements of SARA Title III. SARA Title III provides for Tier I and Tier II reporting. The first is reporting of substances by hazardous categories and the latter is chemical specific information, similar to New Jersey requirements. The State can require Tier II reporting, and the Department therefore chose to combine the two chemical specific reporting requirements into the Community Right to Know Survey.

COMMENT A: The zero reporting threshold contained in the Right to Know rules is counterproductive. The USEPA evaluated various criteria to determine an appropriate reporting threshold for regulations implementing SARA Title III, Section 312. One of the criteria evaluated by USEPA was the impact of information management and cost effectiveness. USEPA found that if too much information is submitted for the staff at the local level to organize into easily accessible files, the utility of all information will be undercut and, therefore, the data management and cost burdens must be balanced against the value of the information that would be lost or gained with a particular reporting threshold. Since March of 1989 when this study summary was printed, the paperwork burden on local agencies has increased dramatically with the inclusion of the non-manufacturing sector and enhanced reporting compliance by all covered facilities.

While the New Jersey reporting forms satisfy the requirements of SARA Title III, the intent of SARA Title III is to provide meaningful data to the State Emergency Response Commissions, Local Emergency Planning Committees, and local fire departments to assist in emergency planning and preparedness. The New Jersey zero threshold inhibits efforts to adhere to this intent by overwhelming local agencies with information which is difficult to manage and use, and placing unnecessary cost burdens on the local agencies and industry.

The Department must reevaluate its decision to readopt the zero reporting threshold and should conduct a survey of local agencies similar to that of USEPA to determine the value of current information. The Department should then attempt to develop an appropriate risk based heuristic, but until such a standard is established, the current SARA reporting threshold of 10,000 pounds for non-EHS chemicals should be adopted. This change would not interrupt either the operation or implementation of the program.

COMMENT B: The survey instructions state there is a zero threshold for reporting substances under the Act. This requirement is arbitrary and bears no rational relationship to the objectives of the law. The Depart-

ment has explained that substances are added to the EHSL only if there is "evidence of significant production or use" because "chemicals used in small quantities are not going to be found in the environment in any significant degree." The zero threshold is contrary to USEPA's position under SARA Title III. The Department has provided no rationale for establishing its zero threshold which is arbitrary. The Department should adopt the SARA Title III thresholds.

COMMENT C: SARA Title III contains an exemption for consumer products; however, the New Jersey survey does not. Since the Department recognizes that substances present in small quantities do not pose a threat to the environment, the lack of consumer product/small quantity exemption is arbitrary.

RESPONSE: The Act does not currently provide for any reporting thresholds or product exemptions in the implementation of the Community Right to Know reporting requirements. Only legislative, not regulatory, amendments could allow for the establishment of a reporting threshold other than "zero" or for specific exemptions. Although the Department, after five years of inventory experience, does believe some reporting threshold above the present zero threshold would be acceptable, the 10,000 pound threshold established for the Federal program has not been demonstrated to be comprehensive or sufficient enough in the Department's opinion. If and when legislative amendments permit the establishment of reporting thresholds, the Department will review existing inventory data and consider the needs of data users when developing any thresholds. Similarly, if authority for a consumer product exemption is provided, the Department will determine if this exemption is appropriate in all circumstances. The Department's responsibility for implementing the Act in an appropriate manner is unaffected by any USEPA position under SARA Title III.

COMMENT: The instructions for the Department's survey require reporting of substances on the "Right to Know Hazardous Substance List." However, the court in *New Jersey Chamber of Commerce v. Hughey*, 775 F.2d 587 (3d. Cir. 1985), stated that any hazardous substance listed as a workplace hazard and not listed as an environmental hazard is deemed to only be a workplace hazard preempted by the Federal Hazard Communication Standard. Therefore, private employers are required only to report on the approximately 160 environmental hazardous substances. The statement requiring reporting of several thousand substances on the hazardous substance list is incorrect and should be deleted.

RESPONSE: The Department requires only that New Jersey employers covered by the Act report EHSL and USDOT substances which are referenced in the Right to Know Hazardous Substance List. All other reporting requirements are cited as Federal requirements, and the Right to Know list is offered as a reference or guide to reportable substances. The thresholds and reporting requirements are explained in the Community Right to Know Survey instructions.

COMMENT: The survey requires reporting of substances separately for each of 19 different categories of containers used for storage. The Department has never provided a reason for the container reporting requirement nor can a valid justification be understood. Since there is no rational relationship between the requirement and the objectives of the law, it should be deleted.

RESPONSE: The Department believes that container information is useful data for a hazardous substances inventory because information on storage of substances used at the site can be useful to emergency responders, and because it provides a more complete profile of the reporting facility. The SARA Title III reporting forms also require container information.

COMMENT: Under N.J.A.C. 7:1G-3.2, the employer should be allowed 30 days to submit clarifying information to the Department. This would allow discussion of the request with the Department, time to gather the information, verify its accuracy, and prepare a report.

RESPONSE: The Department agrees with the commenter and took steps to accomplish this change in February 1988 (see 20 N.J.R. 388(a)). In practice, the Department has, since that time, allowed the 30 day period. The Department has requested the Office of Administrative Law to correct this mistake in the New Jersey Administrative Code. A notice of correction appears elsewhere in this issue of the New Jersey Register.

N.J.A.C. 7:1G-5 Emergency Services Information (ESI) Survey

COMMENT: The current rules require employers to complete the ESIS; however, there is no authority for this requirement and it should be deleted. The Act specifically provides for two surveys—the workplace survey and the environmental survey. It is a fundamental principal of statutory construction that if a legislature includes certain provisions but not others it intended to exclude any others. This is further supported by the very specific criteria provided by the Act for developing and implementing the surveys and the limitations placed on the substances to be covered by the environmental survey. These substances must be on the environmental hazardous substance list which is only to be added to based on "documented scientific evidence." It is clear the Legislature intended to carefully limit the requirements for employers by circumscribing the agencies' authority. This legislative intent must be followed.

RESPONSE: The Department recognizes that no specific reference is made in the Act to an ESIS. However, the Department does have the authority, as evidenced by the "not limited to" language in N.J.S.A. 34:5A-3k, to expand the information reported on environmental hazardous substances to accomplish the purposes of the Act. These purposes include providing detailed information on hazardous substances to local health, fire, police, safety, and other government officials. Further, N.J.S.A. 34:5A-7B states an employer shall complete and transmit pertinent sections of the survey to the local fire department and the local police department. The Department believes that authority to require the reporting of inventory information on hazardous substances for emergency response use on a survey form that meets responder needs is provided for in the Act.

COMMENT: In response to comments questioning the statutory authority of the ESIS on its original proposal, the Department quoted testimony from Senator Dalton, the sponsor of the bill that was passed as the Act. This statement, which was apparently made after passage of the Act, calls the ESIS, although not specifically outlined in the Act, an appropriate means for the Department to fulfill another of its responsibilities under the Act, the annual updating of the EHSL. It is stated that by collecting information on substances on the USDOT list, a statistical basis for adding substances to the EHSL will be developed. This statement does not provide authority for the ESIS and is nothing more than a personal view. As there is stated to be no provision for this survey in the Act, it is axiomatic that there is no authority for the ESIS. In addition, sponsors often only assume that role for some private party, thus having no greater knowledge of the bill than anyone else. Even if specific knowledge is present, a partisan interest may influence statements. For these reasons the statement should be rejected. Finally, the Senator states that by collecting information on quantities of "hazardous materials" the Department may in the future be able to add these to the EHSL. This is contrary to the plain meaning of the Act. The Act provides the EHSL must be limited to chemicals meeting specific criteria. The "hazardous material" list items such as "hazardous substance, n.o.s." can never meet the Act's criteria. The Act must prevail and the ESIS should be dropped.

RESPONSE: The quotation from Senator Dalton referred to in the original adoption of the Right to Know rule, which appears at 16 N.J.R. 1732(a), was not part of the Department's response, but rather was a comment received by the Department on the proposed ESIS. While in the Department's subsequent response to the comments received on the ESIS Senator Dalton's statement is referred to, it is not cited as authority for the survey. As summarized in the response to the prior comment in this adoption, the Department believes authority to utilize a survey such as the ESIS is provided by the Act.

While never cited as authority for any Department action, the Department believes that Senator Dalton's supportive statement regarding the collection of ESI data has continuing importance in that it recognizes that Right to Know is a dynamic process, not a static one. The Act discusses developing procedures for updating the EHSL, it does not establish and fix forever the contents of the list. Also, the description of the Environmental Survey includes the phrase "but not limited to . . ." in reference to the types of information to be collected, which recognizes that the survey process will reveal changing needs and issues pertaining to hazardous substances. Indeed, in five years of survey experience the program has been called upon to undergo several changes. Regarding the use of information from the ESIS as a means for updating the EHSL, the Department believes this is a valid potential use for the data, and that even category or generic group reports would be useful for "flagging" certain groups in which specific substances might be identified for review and possible inclusion on the EHSL. The Department recognizes the commenter's concern about a category such as "hazardous substance, n.o.s." and will consider including amendments in a proposal to be made in the first half of 1990 to the list that would delete such a broad based reporting category.

COMMENT: The statement of Senator Dalton quoted by the Department as the reason for the ESIS called for the survey to be the basis for future additions to the EHSL. To serve this purpose, the survey would have to be designed to collect data relevant to the Act's criteria for

additions to the EHSL. Under the Act, substances may be added to the EHSL only if there is documented scientific evidence that they are carcinogens, mutagens, etc. However, the survey does not collect any information related to those criteria. Further, this information was to be used for future additions to the EHSL. While the Department formally stated in the New Jersey Register on July 2, 1984 that the ESIS materials cannot be added to the EHSL because they do not meet the statutory criteria, by requiring employers to provide the same information on both EHSL substances and ESIS materials the Department has essentially added these materials immediately. The distinction is in name only.

RESPONSE: The Department has not added USDOT substances to the EHSL automatically. The Department went through the required rulemaking procedure for this separate reporting requirement at the time that the ESIS and the USDOT List were proposed.

COMMENT: Reporting of items on the USDOT list on the ESIS is contrary to the Act and otherwise arbitrary. The Act states the EHSL shall only contain "substances" for which a "chemical name" and "CAS number" exist and there must be documented scientific evidence that the substances pose a threat to the public health and safety. The USDOT substances are categories (for example, flammable liquid, n.o.s.), not substances and the Department has admitted they do not meet the statutory criteria. Use of the USDOT items is unworkable because there are no definitions for the items and considerable overlap among the various categories (for example, "hazardous substance, n.o.s.", "flammable liquid, n.o.s.", "combustible liquid, n.o.s.", etc.). The application of these items to employers under the Act is confusing. Further, requiring information on both components and the mixtures in which they are present is redundant, yet this double reporting requirement with respect to USDOT generic categories is retained in the current survey. Finally, the value of reporting USDOT categories is questionable. There seems to be no rational relationship between the objectives of the Act and reporting on the quantity, location, storage methods, etc. of "extract, flavoring liquid" or "perfumery products, with flammable solvent" for example.

RESPONSE: The Act does not require that the EHSL shall only contain substances which have a chemical name or CAS number. Rather, for substances on the list employers are required to provide certain information including these two items. Where this information is not available, this reporting requirement is not applicable. Not all USDOT substances are categories; many are specific chemical substances. The list is comprised of materials that have presented some hazard in a transportation emergency. Because protection of the public safety is a major component of the Right to Know program, information about substances that can cause or contribute to emergency situations is important for the reporting requirements. The Department does share the commenter's concern regarding some of the generic categories and will study all categories when proposing changes to the list in the first half of 1990.

COMMENT: The Department's reliance on USDOT for items reported on the ESIS is inappropriate especially since USDOT uses different criteria than the Department. The Act requires the Department to assess the hazards of chemicals, not a Federal agency.

RESPONSE: The Department has not relied on a Federal agency's criteria for determining reportable substances. Instead, the Department considered what types of information would be pertinent to fire and police departments, and consequently adopted the USDOT Hazardous Materials Table in order to provide those local departments with information about substances that should be reportable in emergency situations.

COMMENT: The automatic revision of the Department's requirements when the USDOT list is updated by USDOT without rulemaking violates the APA and constitutes an invalid delegation of authority.

RESPONSE: Incorporation by reference of sections of the Code of Federal Regulations and various other sources, including future supplements and amendments, is specifically provided for and allowed by N.J.A.C. 1:30-2.2. There is no violation of APA.

COMMENT: The ESIS requirements, which call for information on generic categories (that is, "flammable substance, n.o.s."), are inconsistent with the statutory scheme. The Legislature intended the law to only cover specific substances, not categories.

RESPONSE: In emergency response situations, category or generic information is valuable to police and fire departments as well as specific substance information. The Department believes that the USDOT List and reporting requirements are not inconsistent with the statutory scheme and provide the type of information the Legislature envisioned at N.J.S.A. 34:5A-2.

N.J.A.C. 7:1G-7 Assessment of Civil Administrative Penalties

COMMENT: One commenter questioned whether the Department has any latitude on enforcement if there is a violation. It appears that the way the rule is written there must be a fine if there is a violation. Latitude should be written into the rule to allow the Department to assist either industry or local government employers that are trying to comply with the rules.

RESPONSE: The Department attempts to implement this and other penalty provisions in a fair and reasonable manner. Numerous factors including the willfulness of the violation were considered by the Department in developing these rules. Provision is made at N.J.A.C. 7:1G-7.4 for adjustment in whole or part of penalties assessed in certain situations. Additionally, where a notice of assessment of civil administrative penalty is served, the alleged violator has a right to request, within 20 days of receipt of the notice, a hearing when he or she does not feel the penalty appropriate under the circumstances. The Department does not believe any further latitude is either necessary or appropriate.

COMMENT: The penalty provisions of N.J.A.C. 7:1G-7.8 should be modified to be consistent with the survey purpose of providing information to protect public health, safety and welfare. The seriousness of a violation should be based on the hazard posed by a chemical rather than the quantity of a chemical. Omission of a highly toxic chemical that could pose a threat to public health could result in a smaller penalty than omission of a substance posing no real risk to public health simply because the highly toxic chemical is present in smaller quantities. Alternatively, if quantity is retained as the key factor, the quantity ranges should be modified. Currently, the rule concentrates on the smallest categories with the most serious violation involving omission of a substance present at any time in amounts greater than 1,000 pounds. The seriousness categories should be modified to major—over 10,000 pounds; moderate—100 through 9,999 pounds; and minor—less than 100 pounds. This is consistent with the purposes of the survey and enforcement objectives.

RESPONSE: While the hazard posed by a specific substance depends on its chemical and physical characteristics, categorizing all hazardous substances into several seriousness factors would be both a difficult and extremely subjective process. Whereas, the failure to report or the inaccurate reporting of a large quantity of a hazardous substance is clearly a more serious violation of the rule than the failure to report or the inaccurate reporting of a small quantity of the same hazardous substance. Nevertheless, in developing the quantity ranges, the Department considered the fact that failure to report or the inaccurate reporting of relatively small amounts of some substances could pose a significant hazard. Therefore, the Department is not changing the basis for determining the seriousness factor or increasing the quantity ranges upon which the seriousness factor is based.

COMMENT: The Department has indicated that penalty provisions are necessary to compel compliance with the survey requirements. To impose a penalty for unintentional and unforeseeable violations in no way compels compliance since, in these circumstances, the violation is one which the violator could not be expected to foresee even by the exercise of reasonable diligence. Therefore, the penalty for unintentional and unforeseeable violations should be zero.

RESPONSE: The Act provides for the imposition of penalties for violations without regard to the employer's intentions. In developing the rule, the Department has taken into account, where appropriate, factors such as whether the violation was willful, unintentional but foreseeable, or unintentional and unforeseeable (see N.J.A.C. 7:1G-7.8). Where a notice of assessment of civil administrative penalty is served, the alleged violator has a right to request, within 20 days of receipt of the notice, a hearing when he or she does not feel the penalty is appropriate under the circumstances.

COMMENT: The penalty rule applies a separate penalty for each chemical omitted from surveys. This is inconsistent with prior rules and the common recognition that a company storing thousands of chemicals cannot avoid omissions even through due diligence. The rule should be modified to impose penalties only for "omission from the . . . survey of more than five percent of the hazardous substances present at the employer's facility" . . . as is done in the Department of Health rules.

RESPONSE: It is the Department's intent to view each unreported or inaccurately reported substance as a separate violation, constituting the possibility of the assessment of a separate penalty. For unintentional type violations, the Department believes the seriousness factor which takes into account the quantity of substances stored provides an appropriate method of assessing the degree of hazard for individual substances.

COMMENT: The definition of "completed survey" should be amended to provide that a survey is deemed completed if there is no response from the Department within 45 days. This should eliminate open-ended fines.

RESPONSE: The Community Right to Know program must constantly review and update survey information for accuracy in order to develop the most complete and useful database possible. More than 35,000 employers are sent surveys annually which must be completed, returned, and then reviewed by Department staff. Therefore, the Department does not believe that such a time constraint is appropriate because it would undermine its ability to enforce the reporting provisions of the Act.

COMMENT: N.J.A.C. 7:1G-7.8(4) imposes a fine for non-reporting or inaccurate reporting of an environmental release of a reportable substance. The term environmental release is not defined which makes compliance impossible. Further, the Act does not require the reporting of an environmental release nor does it authorize imposition of a penalty for failure to report. This obligation to report is more than adequately regulated by other Federal and State statutes and rules. As there is no authority for this, the release provisions must be deleted.

RESPONSE: The section cited by the commenter does not penalize for non-reporting or inaccurate reporting of a release. Rather, this provision provides for adjustment of the amount of the penalty if the Department discovers through a release incident that the employer failed to report or reported inaccurate information about the released substance on the inventory survey.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1G.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Administrative Correction
Worker and Community Right to Know Act Rules
Clarification of Completed Environmental Survey
N.J.A.C. 7:1G-3.2

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:1G-3.2, Clarification of completed Environmental Survey. The 14 day deadline for employers to submit clarifying information to the Department was adopted as 30 days. This change upon adoption was filed with the Office of Administrative Law (see R.1988 d.90) and explained in the Summary of Public Comments and Agency Responses of the adoption notice (see 20 N.J.R. 388(a)), but was erroneously not published in the adopted rule text in either the New Jersey Register or the Administrative Code. This notice of administrative Correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

Full text of the correction rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:1G-3.2 Clarification of completed Environmental Survey

The Department may require an employer to submit information clarifying any statement made on Part I and Part II of the Environmental Survey. The Department shall transmit this clarifying information to the county health department (or county clerk if there is no county health department), as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within [14] **30** days of notification, or other date specified by the Department.

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas System
Designation of West Pine Plains to System
Adopted Amendment: N.J.A.C. 7:2-11.12

Proposed: June 5, 1989 at 21 N.J.R. 1480(b).
Adopted: October 13, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: October 16, 1989 as R.1989 d.566, **without change.**

Authority: N.J.S.A. 13:1B-3 et seq.; 13:1B-15.4 et seq.; 13:1B-15.12a et seq., particularly 13:1B-15.12a4; and 13:1D-9.
DEP Docket Number: 026-89-05.
Effective Date: November 6, 1989.
Expiration Date: June 24, 1993.

Summary of Public Comments and Agency Responses:

The designation of the West Pine Plains to the Natural Areas System was proposed on June 5, 1989 at 21 N.J.R. 1480(b). On July 19, 1989, the Department held a public hearing concerning the proposal at the offices of Lebanon State Forest. No members of the public presented testimony at the public hearing. The Department did not receive any written comments on the proposal during the public comment period ending August 21, 1989.

As required by N.J.S.A. 13:1B-15.12a4 and N.J.A.C. 7:2-11.6, the Department has obtained Gubernatorial approval of designation of the West Pine Plains to the Natural Areas System.

Full text of the adoption follows.

7:2-11.12 Natural Areas System

(a)-(b) (No change.)

(c) The following are designated as components of the Natural Areas System:

1.-39. (No change.)

40. Wawayanda Swamp Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry, through Wawayanda State Park;

41. West Pine Plains Natural Area:

i. Location: Bass River State Forest, Woodland Township, Burlington County;

ii. Designation Objective: preservation of a significant portion of the globally rare Pine Plains community, including rare plant and invertebrate species habitat;

iii. Interim Classification: conservation preserve;

iv. Administering Agency: Division of Parks and Forestry, through Bass River State Forest; and

Renumber existing 41. as 42. (No change in text.)

(c)

DIVISION OF COASTAL RESOURCES

Notice of Rule Invalidation
Freshwater Wetlands Protection Act Rules
Preliminary Municipal Approvals Exemption
N.J.A.C. 7:7A-2.7(d)1 and 2

Take notice that provisions of N.J.A.C. 7:7A-2.7(d)1 and 2 have been invalidated by the Superior Court of New Jersey, Appellate Division, in *In the Matter of the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A-1.1 et seq.*, ___ *N.J. Super.* ___, Dkt. No. A-132-88T5 (App. Div. September 7, 1989).

Please contact the Department of Environmental Protection for further information regarding any further action involving this case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

(d)

DIVISION OF COASTAL RESOURCES

Notice of Rule Invalidation
Freshwater Wetlands Protection Act Rules
Transition Area Exemption
N.J.A.C. 7:7A-2.7(f)

Take notice that provisions of N.J.A.C. 7:7A-2.7(f) have been invalidated by the Superior Court of New Jersey, Appellate Division, in *In the Matter of Appeal of the Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and*

"Swale"), 7:7A-2.5(b)(2), and 7:7A-2.7(f), ___ *N.J. Super.* ___, Dkt. No. A-5802-87T3 (App. Div. September 7, 1989).

Please contact the Department of Environmental Protection for further information regarding any further action involving this case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
1990-91 Fish Code
Adopted Amendments: N.J.A.C. 7:25-6

Proposed: July 3, 1989 at 21 N.J.R. 1775(b).
Adopted: October 10, 1989 by the Fish and Game Council, Cole Gibbs, Acting Chairman.
Filed: October 16, 1989 as R.1989 d.567, **with substantive and technical changes,** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.

DEP Docket Number: 027-89-06.
Effective Date: November 6, 1989.
Operative Date: January 1, 1990.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

These amendments were proposed on July 3, 1989. A public hearing concerning the proposal was held on August 8, 1989 at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife (Division) located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Five members of the public presented verbal comment at this hearing. The Department received a total of 388 written comments from 327 commenters during the public comment period which closed on August 15, 1989.

COMMENT: One angler asked the Fish and Game Council (Council) to consider a limit on the number of fishing rods which an individual angler may use at one time.

RESPONSE: Existing Council rules prohibit "set lines," which effectively limits the number of rods one angler can use. An unattended rod which is actively fishing would be construed as a set line and would, therefore, constitute a violation of the Department's current regulations. The Department considers the number of fishing rods which an individual angler can effectively attend a sufficient limitation.

COMMENT: The Department should require one license for both saltwater and freshwater fishing; other states have been successful in instituting a unified license.

RESPONSE: The Fish Code, N.J.A.C. 7:25-6, does not govern the issuance of either freshwater or saltwater fishing licenses. The Department will consider the suggestion as part of its general responsibilities for fisheries management.

COMMENT: Three commenters were concerned that the proposal to set the size limit on largemouth bass at 12 inches year-round by eliminating the restricted harvest season (that is, the increased minimum size limit and reduced creel limit during the period April 1 through June 15) will drastically diminish the bass population and negate the improvement in bass fishing which resulted from the harvest restrictions. The commenters asserted that bass need to be protected while nesting; once a bass is taken from the nest, predators move in and consume the bass eggs. The commenters suggested that another way for the Council to protect the bass population would be to limit the number of bass tournaments held on Lake Hopatcong each year.

RESPONSE: The Council imposed a restricted harvest season on largemouth bass at a time when the size limit was a minimum of nine inches. Two years ago, the Council established a 12 inch minimum size limit in lakes, ponds and reservoirs. The Department has evidence that the increase in the minimum size limit to 12 inches will be sufficient to properly manage the State's largemouth bass populations and that the restricted harvest season is no longer needed. However, the sportfishers who regularly fish Lake Hopatcong commented that the restrictive harvest season is having a beneficial impact on the bass population in that lake. Because the Department's current studies have not been extensive enough to firmly support or disprove this contention for Lake Hopatcong, the Council has decided to retain at N.J.A.C. 7:25-6.12 the existing restricted harvest season for largemouth bass on this lake only, and to further evaluate the issue during the upcoming fishing season.

COMMENT: Three hundred seventeen commenters suggested that the Council eliminate the no-kill area on the Musconetcong River and establish the Ken Lockwood Gorge stretch of the South Branch of the Raritan River as a year-round, fly-fishing only, no-kill area. Eight commenters suggested that the Council establish the Ken Lockwood Gorge stretch of the South Branch of the Raritan River as a year-round, fly-fishing only area, and retain the Musconetcong River no-kill area.

RESPONSE: The Ken Lockwood Gorge is currently restricted to fly-fishing only from mid-April to the end of November. At all other times this stretch is open to fishing with bait and/or artificial lures. The Council did not propose any change to this multiple management approach because it provides for greater recreational opportunities and serves a wider range of angling interests than restricting this area to fly-fishing only on a year-round basis. The weekly trout stockings in April, May and October negate the need for more restrictive rules governing the take of trout. The Council will monitor the success of this Special Regulation Trout Fishing Area and will consider changing its classification as appropriate.

The Council did not propose any change in this year's Fish Code regarding the designation of the Musconetcong River no-kill area. The commenters were concerned that declining water quality makes the Musconetcong area a poor choice for a no-kill area, since these areas are designed to protect the reproduction of native trout populations. However, the Department's data indicates that the water quality of the Musconetcong River is sufficient to support trout. The Council plans to continue to monitor the situation in the Musconetcong River to determine whether it is prudent to retain the no-kill regulation for the area in the future.

COMMENT: One commenter expressed disappointment that the Department removed the Upper Rockaway River from consideration as a wild trout stream and designation as a trout conservation area.

RESPONSE: The proposed 1990-91 Fish Code did not assign either designation to the Upper Rockaway River. Morever, the Upper Rockaway River was not among the streams that the Council considered for designation as a wild trout stream, because its quality is not sufficient to produce wild trout. The designation of a section of the river, from Washington Pond dam to Route 46, as a trout conservation area was considered by the Council but was not approved because the area was deemed to be of more value to the State's anglers under its existing classification. However, the Division of Fish, Game and Wildlife has recommended classifying this section of the Upper Rockaway River as Trout Maintenance waters under the State Surface Water Quality Standards, N.J.A.C. 7:9-4. When this classification is proposed by the Division of Water Resources, it will be subject to full public notice and comment.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 7:25-6.2(f)13 has been corrected to reflect the proper location of Yellow Brook (Monmouth County) in Colts Neck Township, not Atlantic Township.

2. The reference to the rules for Natural Trout Fishing Areas has been deleted from N.J.A.C. 7:25-6.3(d)1 since this designation was deleted from the 1990-91 Fish Code.

3. N.J.A.C. 7:25-6.5(a)16 has been corrected to reflect the proper location of the North Branch of Rockaway Creek in Mountainville, not Mountainside.

4. N.J.A.C. 7:25-6.6(a)2 has been amended to correct the references to the East and West Branches of the Paulinskill River, Sussex County, which were inadvertently reversed in the proposal.

5. Language has been added to N.J.A.C. 7:25-6.6(b)4 to more clearly explain when trout are considered in possession of the angler.

6. N.J.A.C. 7:25-6.7(b)5 has been amended to clarify the legal standard for when a trout is considered unidentifiable as to size or species, and to codify the Department's long-standing practice of allowing anglers on Round Valley Reservoir to prepare fish for on-site consumption while fishing. This exception appeared in the 1989-1990 Fish Code as part of the rules on Round Valley Reservoir, but was inadvertently omitted when these rules were placed in the section on Trophy Trout Lakes at N.J.A.C. 7:25-6.7.

7. The Department has added a definition of "creeled trout" at N.J.A.C. 7:25-6.20 to clarify the usage of the term throughout this subchapter.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 6. 1990-91 FISH CODE

7:25-6.2 Trout season and angling in trout-stocked waters

(a) The trout season for 1990 shall commence 12:01 A.M. January 1, 1990 and extend to midnight March 18, 1990. The trout season shall reopen at 8:00 A.M. Saturday, April 7, 1990 and extend to include March 17, 1991. (See separate rules for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania and Special Regulation Trout Fishing Areas.)

(b) It shall be unlawful to fish for any species of fish from midnight of the 18th of March to 8:00 A.M. on April 7, 1990 in ponds, lakes or those portions of streams that are listed herein for stocking during 1990. (See separate rules for Spruce Run Reservoir and Special Regulation Trout Fishing Areas.)

(c) (No change.)

(d) Trout stocked waters for which in-season closures will be in force are as follows (waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated):

1. Big Flat Brook—100 feet above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 13, 20, 27; May 4, 11, 18, 25;

2. Black River—Route 206, Chester at dam at lower end of Hacklebarney State Park—April 12, 19, 26; May 3, 10, 17, 24;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 9, 16, 23, 30; May 7, 14, 21;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 9, 16, 23, 30; May 7, 14, 21;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard on South Lake Drive, Lakewood—April 9, 16, 23, 30; May 7, 14, 21;

6. Musconetcong River—Lake Hopatcong dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 13, 20, 27; May 4, 11, 18, 25;

7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Delaware River—April 12, 19, 26; May 3, 10, 17, 24;

8. Pequest River—Source to Delaware River—April 13, 20, 27; May 4, 11, 18, 25;

9. Pohatcong Creek—Route 31 to Delaware River—April 10, 17, 24; May 1, 8, 15, 22;

10. Ramapo River—State line to Pompton Lake—April 12, 19, 26; May 3, 10, 17;

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 11, 18, 25; May 2, 9, 16, 23;

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 10, 17, 24; May 1, 8, 15, 22;

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 9, 16, 23, 30; May 7, 14, 21;

14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April 9, 16, 23, 30; May 7, 14, 21;

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April 9, 16, 23, 30; May 7, 14, 21; and

16. Wanaque River—Greenwood Lake dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April 13, 20, 27; May 4, 11, 18, 25.

(NOTE: The Division reserves the right not to stock on the above dates when emergency situations prevail.)

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force are as follows (figure in parentheses indicates the anticipated number of stockings to be carried out from April 10 through May 31);

(NOTE: The Division reserves the right to suspend stocking when emergency conditions prevail.)

1. Atlantic County
Birch Grove Park Pond—Northfield—(4)
Hammonton Lake—Hammonton—(4)

2. Bergen County
Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)
Hohokus Brook—Forest Road to Whites Pond—(4)
Indian Lake—Little Ferry—(4)
Mill Pond—Park Ridge—(2)
Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)
Saddle River—State Line to Grove Street, Ridgewood—(5)
Tienekill Creek—Closter, entire length—(2)
Whites Pond—Waldwick—(3)

3. Burlington County
Crystal Lake—Willingboro—(4)
Rancocas Creek, Southwest Branch—Medford, Mill Street Park to Branch St. Bridge—(4)
Sylvan Lake—Burlington—(3)

4. Camden County
Big Lebanon Run—Neely's Pond dam to Grenloch Lake— (4)
Hopkins Pond—Haddonfield—(3)

5. Cape May County
West Pond—Cape May Courthouse—(4)

6. Cumberland County
Cohansey River—Dam at Seeley's Pond to powerline above Sunset Lake, Bridgeton—(4)
Giampietro Park Lake—Vineland—(3)
Mary Elmer Lake—Bridgeton—(3)
Maurice River—Willow Grove Lake dam to Sherman Avenue, Vineland—(4)
Shaw's Mill Pond—Newport—(3)

7. Essex County
Branch Brook Park Lake—Newark—(4)
Diamond Mill Pond—Millburn—(3)
Verona Park Lake—Verona—(4)

8. Gloucester County
Greenwich Lake—Gibbstown—(3)
Grenloch Lake—Turnersville—(3)
Harrisonville Lake—Harrisonville—(3)
Iona Lake—Iona—(3)
Mullica Hill Pond—Mullica Hill—(3)
Swedesboro Lake—Swedesboro—(3)

9. (No change.)

10. Hunterdon County
Amwell Lake—Linvale—(3)
Beaver Brook—Clinton Township, entire length—(2)
Capoolong Creek—Pittstown, entire length—(5)
Delaware-Raritan Feeder Canal—Bulls Island to Hunterdon-Mercer County line—(6)
Everittstown Brook—Everittstown, entire length—(1)
Frenchtown Brook—Frenchtown, entire length—(2)
Hakihohake Creek—Milford, entire length—(2)
Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—(3)
Milford Brook—Milford, entire length—(3)
Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—(4)
Neshanic River—Kuhl Road to Hunterdon County Route 514—(2)
Rockaway Creek—Readington Township, entire length—(4)
Rockaway Creek, S.Br.—Lebanon to Whitehouse, entire length—(3)
Round Valley Reservoir—Lebanon—(3)
Spring Mills Brook—Spring Mills, entire length—(2)
Spruce Run—Glen Gardner and Lebanon Township, entire length—(4)
Spruce Run Reservoir—Clinton—(3)
Sydney Brook—Sydney, entire length—(1)

Wickecheoke Creek—Covered Bridge, Sergeantsville to Delaware River—(2)

11. Mercer County
Assunpink Creek—Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township—(5)
Colonia Lake—Lawrence Township—(3)
Delaware-Raritan Canal—U.S. 1 to Alexander St., Princeton—(4)
Delaware-Raritan Feeder Canal—Hunterdon-Mercer County line to Upper Ferry Road Bridge—(6)
Rosedale Lake—Rosedale—(3)
Stony Brook—Woodsville to Port Mercer—(4)

12. Middlesex County
Farrington Lake—North Brunswick—(3)
Hook's Creek Lake—Cheesequake State Park—(4)
Ireland Brook—Farrington Lake to point 500 feet upstream of Riva Avenue—(2)
Lawrence Brook—Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St., Milltown—(4)
Roosevelt Park Pond—Edison Township—(3)

13. Monmouth County
Big Brook—Clover Hill, Route 34 to Swimming River Reservoir—(2)
Englishtown Mill Pond—Englishtown—(3)
Garvey's Pond—Navesink—(3)
Hockhocksen Brook—Hockhocksen Road to Garden State Parkway bridge (northbound)—(3)
Holmdel Park Pond—Holmdel—(3)
Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(4)
Mohawk Pond—Red Bank—(4)
Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocksen Brook—(2)
Shark River—Hamilton, Route 33 to Remsen Mill Road—(4)
Spring Lake—Spring Lake—(3)
Takanassee Lake—Long Branch—(4)
Topenemus Lake—Freehold—(4)
Yellow Brook—Heyers Mill Road to Muhlenbrink Road, *[Atlantic]* ***Colts Neck*** Township—(2)

14. Morris County
Beaver Brook—Rockaway, entire length—(3)
Burnham Park Pond—Morristown—(3)
Drakes Brook—Flanders, entire length—(3)
Hibernia Brook—Hibernia, entire length—(4)
India Brook—Mountainside Ave. to Rt. 24, Ralston—(5)
Lake Hopatcong—Lake Hopatcong—(3)
Lake Musconetcong—Netcong—(2)
Mill Brook—Center Grove, entire length—(2)
Mt. Hope Pond—Mt. Hope—(2)
Passaic River—White Bridge to Dead River—(6)
Pompton River—Pequannock Township (see Passaic Co.)—(4)
Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(2)
Speedwell Lake—Morristown—(3)
Whippany River—Tingley Road, Morris Township to Rt. 202, Morristown—(2)

15. Ocean County
Lake Shenandoah—Lakewood, Ocean County Park—(3)
Prospertown Lake—Prospertown—(3)

16. Passaic County
Barbour's Pond—West Paterson—(2)
Clinton Reservoir—Newark Watershed—(3)
Greenwood Lake—West Milford—(2)
Monksville Reservoir—Hewitt—(3)
Oldham Pond—North Haledon—(2)
Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—(6)
Pompton Lake—Pompton Lakes—(2)
Pompton River—Pompton Lake to Newark-Paterson Turnpike—(4)
Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)
Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)

17. Salem County
Harrisonville Lake—Harrisonville—(3)
Maurice River—Willow Grove Lake dam to Sherman Avenue, Vineland—(4)
Schadler's Sand Wash Pond—Pennsgrove—(3)

18. Somerset County
Harrison Brook—Liberty Corner, entire length—(1)
Lamington River—Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River—(4)
Middle Brook, E.Br.—Martinsville, entire length—(2)
Passaic River—White Bridge to Dead River—(6)
Peapack Brook—Peapack, entire length—(4)
Raritan River—Jct. of Raritan River N.Br. and S.Br. to dam at Edgewater Road—(4)
Rock Brook—Zion, entire length—(1)

19. Sussex County
Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
Andover Junction Brook—Andover, entire length—(2)
Bier's Kill—Shaytown, entire length—(2)
Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 feet above Steam Mill Bridge on Crigger Road—(4)
Canistear Reservoir—Newark Watershed—(3)
Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)
Cranberry Lake—Byram Township—(3)
Culver's Lake Brook—Frankford Township, entire length—(2)
Dry Brook—Branchville, entire length—(2)
Franklin Pond Creek—Hamburg Mt. Wildlife Management Area, entire length—(4)
Glenwood Brook—Lake Glenwood to State line—(2)
Iliff Lake—Andover Township—(3)
Kymer's Brook—Andover, entire length—(2)
Lake Musconetcong—Netcong—(2)
Lake Hopatcong—Lake Hopatcong—(3)
Lake Ocquittunk—Stokes State Forest—(3)
Little Flat Brook—Sandyston Township, entire length—(5)
Little Swartswood Lake—Swartswood—(2)
Lubbers Run—Byram Township, entire length—(5)
Neldon Brook—Swartswood, entire length—(2)
Papakating Creek—Plains Road bridge to Route 565, Lewisburg—(2)
Papakating Creek, W. Br.—Libertyville, entire length—(2)
Pond Brook—Middleville, entire length—(3)
Roy Spring Brook—Stillwater, entire length—(1)
Saw Mill Lake—High Point State Park—(3)
Shimers Brook—Montague Township, entire length—(2)
Stony Lake—Stokes State Forest—(3)
Swartswood Lake—Swartswood—(3)
Trout Brook—Middleville, entire length—(2)
Tuttles Corner Brook—Tuttles Corner, entire length—(2)
Wawayanda Lake—Vernon—(3)

20. Union County
Green Brook—Route 527, Berkely Heights to Route 22, Scotch Plains—(2)
Lower Echo Park Pond—Mountainside—(3)
Milton Lake—Madison Hill Road Bridge to Milton Lake dam, Rahway—(4)
Rahway River—Morris Ave. (Route 524), Union to St. George Avenue (Route 27), Rahway—(4)
Seeleys Pond—Berkely Heights—(3)

21. Warren County
Barker's Mill Brook—Vienna, entire length—(1)
Beaver Brook—Silver Lake Dam to Pequest River—(5)
Blair Creek—Hardwick Center to Blair Lake—(2)
Blair Lake—Blairstown—(2)
Buckhorn Creek—Roxburg, entire length—(2)
Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(2)

Furnace Brook—Oxford, entire length—(2)
Furnace Lake—Oxford—(3)
Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)
Jacksonburg Creek—Jacksonburg, entire length—(2)
Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—(4)
Merrill Creek—Stewartsville, below reservoir—(2)
Merrill Creek Reservoir—Stewartsville—(3)
Mountain Lake—Buttzville—(3)
Pohatcong Creek—Mt. Bethel to Route 31—(2)
Pophandusing Creek—Oxford Road, Hazen to Delaware River—(2)
Roaring Rock Brook—Brass Castle, entire length—(2)
Trout Brook—Hackettstown, entire length—(2)
Trout Brook—Hope, entire length—(2)
(g) (No change.)
(h) A person shall not take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April 7, 1990 until midnight May 31, 1990, or more than four of these species during the periods of January 1, 1990 to midnight March 18, 1990 and June 1, 1990 through midnight March 17, 1991 from trout-stocked streams and rivers except as designated for Special Regulation Trout Fishing Areas.
(i) A person shall not take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the periods extending from January 1, 1990 to midnight March 18, 1990 and from 8:00 A.M. April 7, 1990 to midnight March 17, 1991 from trout-stocked lakes, ponds, and canals, except as designated for Special Regulation Trout Fishing Areas.
(j) Spruce Run Reservoir in Hunterdon County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 18, 1990, and extending to 8:00 A.M. April 7, 1990, must be returned to the water immediately and unharmed.

7:25-6.3 Special Regulation Trout Fishing Areas—Fly-Fishing Waters

(a) From 5:00 A.M. on Monday, April 16, 1990 to and including November 30, 1990 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:
1.-2. (No change.)
(b) Beginning January 1, 1990 to midnight March 18, 1990 and from 8:00 A.M. on April 7, 1990 to midnight, March 17, 1991, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:
1. (No change.)
(c) (No change.)
(d) The following rules shall apply to the above designated fly-fishing waters:
1. Fishing in Fly-Fishing Waters is permitted 24 hours daily except on those days during April and May when they are closed for stocking. *[(See separate regulation for Natural Trout Fishing Areas). Authority: N.J.S.A. 23:5-11; 23:5-17.]*

7:25-6.4 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stretch of the Pequest River is designated as a Seasonal Trout Conservation Area: An approximately one-half mile portion of the Pequest River, within the Pequest Wildlife Management Area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to a point, clearly defined by markers, adjacent to Foot Hill Lane.
(b) During the period of May 28 through September 30, 1990, the following rules shall apply to the Seasonal Trout Conservation Area designated at (a) above:
1.-5. (No change.)

7:25-6.5 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) The following streams, or portions thereof, are designated as Wild Trout Streams. Listing of streams in this category does not convey the right to trespass or fish on private lands without the landowner's permission. These waters will not be stocked with trout. Unless otherwise noted, the entire length of the stream is included in the designation.
1. Bear Creek (Southtown);
2. Bear Swamp Brook (Mahwah);
3. Black Brook (Clinton Wildlife Management Area);
4. Burnett Brook (Ralston);
5. Cold Brook (Oldwick);
6. Dark Moon Brook (Johnsonburg);
7. Flanders Brook (Flanders);
8. Hance's Brook (Penwell);
9. Hickory Run (Califon);
10. India Brook (Source to Mountainside Ave., Mendham);
11. Ledgewood Brook (Ledgewood);
12. Little York Brook (Little York);
13. Lomerson Brook (Pottersville);
14. Merrill Creek (Stewartsville, upstream of reservoir);
15. Mill Brook (Montague);
16. North Branch of Rockaway Creek *[(Mountainside)]* ***Mountainville***;
17. Parker Brook (Montague);
18. Pequannock River (Newark Watershed, Oak Ridge; Road bridge downstream to railroad bridge; immediately upstream of Charlottesburg Reservoir);
19. Rhineharts Brook (Hacklebarney State Park);
20. Rocky Run (Clinton Twp.);
21. Stephensburg Creek (Stephensburg);
22. Stony Brook (Stokes State Forest);
23. Stony Brook (Washington Twp., Morris County);
24. Tetertown Brook (Tetertown);
25. Trout Brook (Hacklebarney State Park);
26. Turkey Brook (Mount Olive);
27. Van Campens Brook (Delaware Water Gap National Recreation Area);
28. West Brook (Source downstream to Windbeam Club Property); and
29. Willoughby Brook (Clinton Twp.)
(b) The following shall apply to the Wild Trout Streams designated at (a) above:
1. Fishing in Wild Trout Streams is permitted year-round;
2. Only artificial lures and flies may be used. While fishing, the use or possession of any natural bait, live or preserved, is prohibited.
3. A person shall not kill or have in possession, while fishing the portions of the Pequannock River and Van Campens Brook designated as Wild Trout Streams, trout less than 12 inches in total length. For all other designated Wild Trout Streams, the minimum length for trout shall be seven inches in total length;
4. During the period extending from 8:00 A.M. April 7, 1990 to September 15, 1990, a person shall not have in possession any more than two legally sized dead, creeled or otherwise appropriated trout. Additional trout may be caught during this period, and during the remainder of the year, provided they are immediately returned to the water unharmed; and
5. Size limits and creel limits on species other than trout are in accordance with Statewide rules.

7:25-6.6 Special Regulation Trout Fishing Areas—Year-Round Trout Conservation Areas

(a) The following stream segments are designated as Year-Round Trout Conservation Areas and are subject to the *[rules]* ***provisions*** at (b) below governing these areas on a year-round basis:
1. Toms River, Ocean County—a one-half mile stretch of river at the downstream end of Riverwood Park in Dover Township defined by markers; and
2. *[West]* ***East*** Branch of Paulinskill River, Sussex County—from the County Route 648 Bridge, downstream to its confluence

with the *[East]* ***West*** Branch of the Paulinskill at Warbasse Junction, a distance of approximately 2.25 miles.

(b) The following shall apply to the Year-Round Trout Conservation Areas designated at (a) above:

1. Fishing in Year-Round Trout Conservation Areas is permitted year-round;

2. Only artificial lures and flies may be used. While fishing, the use or possession of any natural bait, live or preserved, is prohibited;

3. A person shall not kill or have in possession, while fishing, any trout less than 15 inches in total length;

4. A person shall not have in possession, while fishing, any more than one dead, creeled or otherwise *[appropriated]* ***obtained*** trout, except that trout may not be retained during pre-season and in-season stocking closures which apply to the remainder of the respective rivers where these areas exist. Additional trout may be caught provided they are returned to the water immediately and unharmed; and

5. Size limits and creel limits on species other than trout are in accordance with Statewide rules.

7:25-6.7 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) The following lake is designated as a Trophy Trout Lake:

1. Round Valley Reservoir.

(b) The following rules apply to the Trophy Trout Lake designated at (a) above:

1. The minimum size of brown trout and rainbow trout shall be 15 inches. The daily bag and possession limit for brown trout and rainbow trout shall be two in total;

2. There shall be no closed season for brown trout and rainbow trout;

3. The minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one;

4. The season for lake trout shall extend from 12:01 A.M. January 1, 1990 to midnight, September 15, 1990 and from December 1, 1990 to midnight, September 15, 1991; and

5. A person shall not have in possession, while on the waters ***or adjacent lands of any*** designated *[as]* Trophy Trout *[Lakes]* ***Lake***, any fish, or any part thereof, which has been mutilated so that its size at capture cannot be determined *[beyond a reasonable doubt to be above the minimum size allowed by this subchapter]*, or so that it is unidentifiable as to species***, except that this restriction shall not apply to fish which are being prepared for immediate on-site consumption***.

7:25-6.8 Special Regulation Trout Fishing Areas-Major Trout Stocked Lakes

(a) The following lakes are designated as Major Trout Stocked Lakes:

1. Canistear Reservoir;
2. Clinton Reservoir;
3. Lake Hopatcong;
4. Merrill Creek Reservoir;
5. Monksville Reservoir;
6. Swartswood Lake; and
7. Wawayanda Lake.

(b) The following apply to the Major Trout Stocked Lakes designated at (a) above:

1. Fishing is permitted year-round unless otherwise specified by an administering agency of the water body other than the Division;

2. There shall be no size limit for any species of brook trout, brown or rainbow trout, or any hybrids thereof, except that no more than two trout over 15 inches in length may be in possession;

3. A person shall not take, kill or have in possession, in one day, more than six in total of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April 7, 1990 until May 31, 1990, or more than four of these species during the periods of January 1, 1990 to midnight March 18, 1990 and June 1, 1990 through midnight March 17, 1991. Trout, if taken during the period commencing at midnight, March 18, 1990 and extending to 8:00 A.M., April 7, 1990, must be returned to the water immediately and unharmed;

4. In Merrill Creek Reservoir, the minimum size for lake trout shall be 24 inches and the daily bag and possession limit shall be one; and

5. In Merrill Creek Reservoir, the season for lake trout shall extend from 12:01 A.M. January 1, 1990 to midnight, September 15, 1990 and from December 1, 1990 to midnight September 15, 1991.

7:25-6.9 Baitfish

(a) (No change.)

(b) In waters listed in this code to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March 18 to June 15 except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than three and one-half feet square.

(c)-(d) (No change.)

7:25-6.10 and 6.11 (No change in text.)

7:25-6.12 Warmwater fish

(a) Except as noted for waters stocked with trout, closed seasons are hereby eliminated on all freshwater fish and on striped bass or any hybrid thereof. (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate rules.)

(b)-(c) (No change.)

(d) The minimum size of smallmouth bass shall be nine inches, except for Monksville Reservoir (Passaic County), Merrill Creek Reservoir (Warren County), and Round Valley Reservoir (Hunterdon County, where the minimum size shall be 13 inches. (See separate rules for Greenwood Lake and the Delaware River between New Jersey and Pennsylvania.)

(e) The minimum size of largemouth bass in lakes, ponds and reservoirs shall be 12 inches and in rivers, streams and other waters it shall be nine inches***, except that in Lake Hopatcong during the period of April 1 through June 15, an 18 inch minimum size limit shall be in effect***. There shall be no size limit on largemouth bass in Round Valley Reservoir. (See separate rules for Greenwood Lake and the Delaware River.)

(f) ***The*** *[Daily]* ***daily*** bag and possession limit for largemouth bass and smallmouth bass shall be *[not more than]* five in total ***except that in Lake Hopatcong during the period of April 1 through June 15, the limit for largemouth bass is one***. (See separate rules for Greenwood Lake and the Delaware River.)

(g)-(k) (No change.)

(l) The daily bag and possession limit for chain pickerel shall be five.

(m) The minimum length on walleye shall be 15 inches, except for Monksville Reservoir and Greenwood Lake, where it shall be 18 inches.

(n) The daily bag and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir, and the Wanaque River between Greenwood Lake and Monksville Reservoir, where it shall be two.

(o) The minimum length for striped bass shall be 36 inches, and the minimum length for striped bass hybrids shall be 16 inches. The daily bag and possession limit for either shall be two.

7:25-6.13 Ice fishing

(a)-(c) (No change.)

7:25-6.14 to 6.16 (No change in text.)

7:25-6.17 Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following rules for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

1.	Season	Size	Bag Limit
Trout	No closed season	No minimum	3
Largemouth bass & smallmouth bass	No closed season	12 inch minimum	5 singly or in aggregate
Chain pickerel	No closed season	15 inch minimum	5
Muskellunge and any hybrid thereof	No closed season	30 inch minimum	1
All other species	No closed season	No minimum	No limit

2.-5. (No change.)

7:25-6.18 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following rules for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Bag Limit
Trout	April 7-Sept. 30	No minimum	5
Largemouth bass and smallmouth bass	No closed season	9 inch minimum	5 in total
Walleye	No closed season	15 inch minimum	5
Chain pickerel	No closed season	12 inch minimum	5
Muskellunge, and any hybrid thereof	No closed season	30 inch minimum	2
Northern pike	No closed season	24 inch minimum	2
Striped bass	No closed season	36 inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other fresh-water species	No closed season	No minimum	No limit

2. Fishing licenses of either State will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken; however, any person fishing from the shore must obtain a license in that State on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank.

3.-7. (No change.)

7:25-6.19 (No change in text.)

7:25-6.20 Definitions

Unless the context clearly implies a differing usage, the following definitions shall apply in this Code:

. . .

"Creeled trout" shall mean a trout in the possession of a fisherman.

. . .

"Trout" shall include the following species and all hybrids and strains thereof:

1.-3. (No change.)

4. Rainbow trout Oncorhynchus mykiss

. . .

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Volatile Organic Substances in Consumer Products

Adopted Amendments: N.J.A.C. 7:27-23.2, 23.3, 23.4 and 23.5

Proposed: May 1, 1989 at 21 N.J.R. 1055(a).

Adopted: October 13, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: October 16, 1989 as R.1989 d.568, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 016-89-04.

Effective Date: November 6, 1989.

Operative Date: December 12, 1989.

Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, hereafter referred to as subchapter 23, to regulate emissions of volatile organic substances (VOS) to the atmosphere. These amendments limit the amount of VOS that can be contained in specified architectural coatings. In addition, the labeling requirements are being modified to allow the use of terms other than VOS in order to promote regional conformity. The provisions of subchapter 23 are part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone, as well as efforts to promote national and regional consistency in rules affecting architectural coatings.

A public hearing was held on June 5, 1989, at the Lewis Herrmann Labor Education Center in New Brunswick, New Jersey, to provide interested parties the opportunity to present testimony on the proposed amendments. The comment period closed June 9, 1989. The Department received written testimony from 98 persons and 19 persons presented comments at the public hearing. In addition, 24 persons signed petitions for rulemaking on subchapter 23.

General Comments:

COMMENT: Several commenters support the proposed amendments. One commenter specifically encourages the Department's efforts to promote regional consistency by consulting with New York.

RESPONSE: The Department appreciates the support and plans to continue working with New York and California to promote regional and national consistency whenever possible.

COMMENT: Regulation of consumer products should be done at the national level. State-by-state regulation could cause chaos in the marketplace.

RESPONSE: A national approach to consumer products has been advocated by the Department. However, in view of the lack of such action, the Department has been forced to proceed with rules for New Jersey as part of its responsibility under the Clean Air Act (CAA) to achieve the NAAQS for ozone. In order to promote national consistency, the Department is working with New York, California, and other states to ensure uniform standards when possible throughout the country.

COMMENT: These rule amendments will substantially reduce the concentration of ozone in the ambient air in furtherance of the State's effort to attain the NAAQS. They will also reduce indoor air pollution, which has become a major health threat, and will further source reduction goals by limiting the amount of hazardous materials in products. While the majority of architectural coatings already comply with the proposed limits, it is vital that the remaining coatings comply because, while solvent-borne coatings comprise only 35 percent of the coating volume in this area, they produce 75 percent of the total VOS emissions.

RESPONSE: The reduction of indoor air pollution has been mentioned previously in connection with this rule. Source reduction is an added benefit. The compliance of all coatings marketed in New Jersey is an important aspect of the effectiveness of this rule.

COMMENT: All businesses should be covered by limitations on VOS in consumer products. The State Implementation Plan (SIP) requires smaller and smaller sources to be regulated in order to attain the NAAQS for ozone.

RESPONSE: Rules on consumer products will not be developed business by business, but product by product. Anyone who then manufactures a covered product will have to make a complying product, and anyone who uses a covered product will only be able to purchase complying products.

As information becomes available, regulatory approaches for various products will be developed. At the present time, air fresheners and architectural coatings are the two products about which we have sufficient information for rulemaking. Possible future categories include consumer insecticides, hair care products, antiperspirants and deodorants, and all-purpose cleaners.

COMMENT: A United States Environmental Protection Agency (USEPA) report, "Photochemically Reactive Organic Compound Emissions from Consumer and Commercial Products", released in November 1986, lists seven subcategories of consumer products—air fresheners, architectural coatings, consumer insecticides, adhesives, hair sprays, all-purpose cleaners, and car polishes and waxes—which account for 85 percent of VOS emissions from this source category. Two of these subcategories are included in subchapter 23, and the other five should be studied and restricted to ensure proper reduction of VOS and ozone in New Jersey.

RESPONSE: In the next five to 10 years, the Department plans to consider additional categories of consumer products for control. At this time, the Department has information that ranks the various subcategories of consumer products in terms of potential VOS emissions. However, there is not sufficient information in the November 1986 report on which to base a rule. As additional information becomes available, other subcategories of products will be proposed for control.

COMMENT: The amended rules successfully address all changes suggested earlier by one commenter. These rules are a necessary part of the State's efforts to attain the NAAQS for ozone and will implement a strategy commitment contained in the SIP.

RESPONSE: The Department acknowledges that these rules implement an important control strategy contained in the SIP and as such are a necessary part of ongoing efforts to attain the NAAQS for ozone.

COMMENT: The information mailed out about the adoption of subchapter 23 was difficult to read and full of bold-faced words, brackets and asterisks. Would it be possible to issue a copy of the rule which is not marked up?

RESPONSE: The adoption document for subchapter 23 mailed to all commenters contains bold-faced words, brackets and asterisks for a reason. The intent of this document is to show commenters how the rule was changed in response to their comments. The format used is that established by the Office of Administrative Law for clarity of documents appearing in the New Jersey Register. The full subchapter as adopted is available upon request from the Department.

COMMENT: The Department should have adequate staff and resources for inspection and enforcement to ensure that these rules are effective.

RESPONSE: Adequate resources and staff are important aspects of inspection and enforcement for any rule the Department promulgates and are always a consideration. Such consideration is, in part, what prompted the Department to propose a "grandfather" period of definite and finite duration in amendments proposed elsewhere in this issue of the New Jersey Register. A "grandfather clause" of limited timespan will allow the Department to initially concentrate on products manufactured after the applicable deadline. Then, after February 28, 1993, there will be no need for batch code information, making inspections and enforcement easier.

COMMENT: There are two typographical errors in the proposal (as filed with the Office of Administrative Law). On the title page, N.J.A.C. 7:27-23.7 is identified as proposed for amendment when it is not, and in Table 1, the equivalent to the "all others" limit of 2.1 pounds of VOS per gallon should read 0.25 kilograms per liter, not 0.65 kilograms per liter.

RESPONSE: The typographical errors have been noted, and the kilograms per liter limit listed in Table 1 for "all others" has been corrected. This change corresponds to the "all others" limit set forth in the earlier proposal at 20 N.J.R. 2002(a).

N.J.A.C. 7:27-32.2 Definitions

COMMENT: One commenter supports changing the phrase "personal hygiene" in the definition of "air freshener" to "for use on the human body".

RESPONSE: The Department believes the change clarifies the intended coverage of the definition and appreciates the support.

COMMENT: The definition of "consumer product" needs amendment. Some products sell in retail markets and some do not. The commenter questions which products and producers are subject to the rule, how they are subject to it and why.

RESPONSE: To be a consumer product a consumer should be able to purchase it and use it. At this time, air fresheners available to consumers are subject to the rule. The Department does not have information about commercial products not available at the retail level and therefore has not regulated them.

In order to avoid confusion when dealing with architectural coatings, the Department is considering dividing the rule into two separate rules, one for architectural coatings, and the other for air fresheners and any future products that are added. This would clarify that items such as industrial maintenance coatings and traffic coatings are covered no matter where they are bought or who buys them. This division of the rule should occur at the time of the adoption of the amendments proposed elsewhere in this issue of the New Jersey Register.

COMMENT: The phrase "it can be used as a primer under wallcoverings" should be added to the definition of a "quick-dry primer-sealer".

RESPONSE: The indicated phrase adds nothing to the definition and is not being incorporated. The phrase "provide a firm bond between the substrate and subsequent coats" should adequately describe the need for a "quick-dry primer, sealer, and undercoater" prior to the application of wallpaper. The "subsequent coats" need not be another architectural coating; it could be wallpaper or other wallcovering.

COMMENT: The term "sealer" should be taken out of the "primer, sealer and undercoater" category and established as a new category with a limit of 5.0 pounds per gallon (0.60 kilograms per liter). This category would replace "waterproofing sealer" and would cover currently missing categories such as stain-killing sealer, alkali-resistant sealer, and other specialty, low-volume sealers. The primers and undercoaters would remain as a separate category with the current limit.

RESPONSE: The definition of "primer, sealer, and undercoater" covers the categories of stain-killing sealer and alkali-resistant sealer by the use of such phrases as "block stains", and "prevent harm to subsequent coatings by materials in the substrate". Waterproofing sealers have a different function and should not be grouped with these other types of sealers. The Department sees no need for a separate category and limit for "sealers".

COMMENT: The definition of "shellac" should be modified to indicate that only one type of natural resin can be used to formulate shellac. The definition should read: "Shellac: Clear or pigmented coating formulated solely with the resinous secretions of the lac beetle ("laccifier lacca") thinned with alcohol and formulated to dry by evaporation without a chemical reaction." This will eliminate potential abuse of this category.

RESPONSE: The Department has considered the use of this definition and has proposed it as an amendment to the rule elsewhere in this issue of the New Jersey Register.

COMMENT: The definition of "wood preservative" in N.J.A.C. 7:27-23.2 leaves a potential loophole in the rule by basing this category on the presence in the coating of a wood preservative product registered by USEPA. By adding a minimal amount of pesticide to provide mildew resistance or some other purpose, a product could be considered to qualify for the wood preservative standard of 4.6 pounds of VOS per gallon (0.55 kilograms per liter) rather than the more appropriate nonflat VOS limit of 3.2 pounds per gallon (0.38 kilograms per liter) or other lower standard. Inclusion in this category should be based on whether the coating is registered with USEPA as a pesticide, since such registration requires the formula to have as an ingredient a registered pesticide product at a specific minimum level. New York bases its wood preservative category on coating registration. The commenter suggests the following wording to accomplish this:

"Wood preservative coating" means any coating which is formulated for the purpose of protecting exposed wood from decay or insect attack and which is registered as a pesticide product with the United States Environmental Protection Agency.

RESPONSE: The definition currently contained in the rule is virtually the same as that in effect in California. In its recently adopted revised model rule, the California Air Resources Board (CARB) did not propose any change to the definition based on a perceived loophole. However, in the CARB rule, the VOS limits for "stains" and "wood preservative coatings" are all 2.9 pounds per gallon (0.35 kilograms per liter) and there is no incentive to try to have a coating defined as a "wood preservative coating". Because there is a difference in the VOS content limits in New Jersey, the commenter's recommended definition is proposed for amendment elsewhere in this issue of the New Jersey Register.

N.J.A.C. 7:27-23.3 Architectural coatings

COMMENT: The proposal incorrectly states that there are very few nonphotochemically reactive solvents, and therefore rules requiring the use of such solvents have been ineffective. One commenter states that his industry has been using nonphotochemically reactive solvents for years. This amended rule may require the use of less nonphotochemically reactive solvents, such as mineral spirits, and of more photochemically reactive ones, such as xylene or toluene, resulting in greater VOS emissions.

RESPONSE: The only nonphotochemically reactive solvents consist of chlorofluorocarbons and very low vapor pressure organics. Not many types of coating can use these solvents. If a coating already uses non-VOS solvents and meets the requirements of the rule, there should be no need to change the formulation and add VOS solvents. The experience in California has been that a reduction in VOS emissions has occurred after the introduction of rules limiting the VOS content of architectural coatings. The Department has no evidence that VOS emissions will increase.

COMMENT: The Department has displayed in the proposal an anti-small business, pro-big business bias. The commenter states that this is evidenced by statements that "the cost of compliance is expected to be relatively small for large companies" and "the highest costs that a small business would incur have been established at $3 million". Three million dollars is a lot of money and should be more strongly considered by the Department. Further, while national manufacturers have experience and know-how from other states, small companies need time to reformulate, change their manufacturing process and raise the capital necessary to comply.

RESPONSE: The $3 million figure cited is a worst case estimate. It is expected that few, if any, companies will incur costs as high as $3 million. Many coatings are already in compliance with the VOS content limits contained in the rule. The only cost of compliance for companies producing such coatings will be for changes to labeling, which are anticipated to be relatively small.

The costs were taken into consideration. However, because of the preponderance of small businesses in the coatings industry, estimated at 70 percent of all manufacturers, the environmental concerns outweigh the economic impact and no small business exemption can be granted.

COMMENT: The proposal states VOS can be replaced with water and further states waterborne coatings average $1.25 less per gallon than solvent-borne coatings. As solvent-borne coatings have an average cost of about $1.00 per gallon, the commenter does not understand the Department's figures. Further, such a change will impact performance of products and reduce the selling season by four to five months.

RESPONSE: Replacing VOS solvents with water is only one means of producing a complying coating. High solids content is another. The cost estimates cited refer to the cost to the consumer at the retail level, not the cost of manufacturing, and are an average.

Information gathered by CARB and USEPA Region IX indicates that there are products on the market which comply with the VOS limits established in this rule and which perform as well as solvent-borne coatings. In addition, a survey of painting contractors in California performed by USEPA Region IX indicated that low temperatures and high humidity had no more detrimental an effect on waterborne coatings than on solvent-borne ones. Therefore, the selling season should not be shortened.

COMMENT: The considerable advantages of limiting VOS in architectural coatings far outweigh the costs of new equipment, and research and development for smaller companies.

RESPONSE: The Department has come to the same conclusion and has adopted the additional categories contained in the proposal.

COMMENT: In many instances, in order to conform with the rule, the viscosity of the product will have to be changed and more material will have to be used to coat the desired area. This might result in an increase in VOS emissions.

RESPONSE: There is no evidence that more paint will have to be used to coat the same area and thereby increase emissions.

COMMENT: One commenter asks where the data from the industry of which he is a member are that leads the Department to expect significant VOS emission reductions from this rule. He also requires a list be provided with the names of individuals and companies in industry that were consulted with respect to this rule.

RESPONSE: In 1985, the Department and the New York Department of Environmental Conservation (NYDEC) jointly conducted a survey of architectural coatings manufacturers who market in the northeast. Approximately 125 manufacturers that market in New Jersey responded. The data provided by the respondents show that an overall reduction in VOS emissions will result from this rule.

In addition, information gathered by NYDEC and CARB has been used, as well as information submitted to the Department during the initial proposal of the rule. At the present time, a list of all individuals and companies that have contributed to the background for this rule does not exist.

COMMENT: The proposal states that "an exemption based upon the size of the company producing the product could leave up to 50 percent of the architectural coatings in these categories exempt from the rule". The commenter could not find this exemption in the rule. Where does such an exemption appear in the rule?

RESPONSE: As the proposal goes on to state, the Department has balanced the need to protect the environment against the economic impact of these amendments and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety, and, therefore, no exemption from coverage can be made. For these reasons, as stated in the proposal, no exemption has been included in the rule.

COMMENT: Does N.J.A.C. 7:27-23.3 mean that material produced prior to January 1, 1990, and not in compliance with the proposed rule cannot be sold, offered for sale, held for some future sale, be provided or applied after January 1, 1990?

RESPONSE: As N.J.A.C. 7:27-23.3 is currently adopted, no noncomplying products can be sold or used in New Jersey after the applicable compliance date, no matter when they were manufactured. However, a "grandfather clause" is being proposed to allow the continued sale of noncomplying products manufactured prior to the compliance date for a three year period. This proposal appears elsewhere in this issue of the New Jersey Register.

COMMENT: The date of manufacture, not the date of sale or use, should be the trigger date for compliance. The manufacturer only has sole control over the manufacturing process and the date of manufacture is his only means of compliance. One commenter suggests the phrase "for products manufactured after these dates" be added to N.J.A.C. 7:27-23.3(a). A similar date of sale requirement in one district in California cost one company $102,400, or $5.00 per gallon, to remove noncomplying paint. It would therefore cost approximately $1.1 million to remove the estimated 220,000 gallons that would remain in New Jersey. Another commenter suggests that N.J.A.C. 7:27-23.3(a) be amended to read as follows:

"No person shall sell, offer for sale, hold for sale, provide, apply or manufacture for sale within New Jersey any architectural coating, manufactured after January 1, 1990 which contains more than the applicable limit of VOS per volume of coating excluding water and any colorant added to tint bases, as allowed in Table 1 in (e) below."

In addition, other similar language is suggested. One commenter suggests allowing sale and use of noncomplying products through December 31, 1992, which would be similar to the three year period recommended in California and thus promotes national consistency. Suggested language to accomplish this is provided. Still another commenter supports a one year period.

RESPONSE: The Department is proposing a "grandfather clause" in response to a petition for rulemaking submitted during the public comment period. This amendment will allow the sale of noncomplying products manufactured prior to the applicable compliance date until February 28, 1993. The use of noncomplying coatings manufactured prior to the applicable compliance date is indefinitely "grandfathered". The three year period for sale of noncomplying products manufactured prior to the compliance date was chosen because it is sufficient for the turnover of slow moving stock, which accounts for only a small percentage of total coatings volume.

COMMENT: The State's assumption that manufacturers have switched to producing compliant paints for NYDEC's rule and, therefore, as of July, 1989, complying products will be available for sale in New Jersey as well as New York, is incorrect. Due to demand for the performance characteristics of noncomplying paints, manufacturers have continued to produce these products. Further, the July 1, 1989, New York compliance date has no impact on small manufacturers who deal only with the New Jersey market. The demand for manufacturers to produce noncompliant products until the last minute with no legal requirement that they change formulations any earlier will lead to a considerable inventory of noncompliant paint at all levels of market with no allowance of time to deplete inventory. The greatest impact will be on retailers and consumers. Further, the commenter questions what provisions the Department has made to accommodate proper disposal of small quantities of noncomplying paint.

RESPONSE: In this issue of the New Jersey Register, a proposal for inclusion of a "grandfather clause" appears. A three year period will be allowed for depleting existing stocks of coatings manufactured prior to the compliance date. With this provision, there will be no need to dispose of any paint.

For small manufacturers which only market in New Jersey, the "grandfather" period will allow extra time to develop and bring into production complying coatings, since they can continue to produce existing noncomplying coatings up until the applicable January 1, 1990, or February 28, 1990, compliance date. Also, the "grandfather" period of three years applies to the sale of noncomplying coatings manufactured prior to the compliance date. The use of such coatings is indefinitely "grandfathered", thus allowing consumers to use coatings they may have previously purchased.

COMMENT: One commenter states that, for those products requiring reformulation, every effort will be made to make the products available to New Jersey customers by July 1, 1989. However, priority in supplying these products will be given to New York customers who at that time will be under the regulatory mandate to comply.

RESPONSE: The Department realizes the difficulties that may be encountered in distributing complying paints beginning July 1, 1989. However, with the inclusion of the proposed "grandfather clause" in the rule, early introduction of complying coatings into the distribution system becomes less crucial. As long as complying coatings are manufactured by the applicable compliance date, compliance with the rule will be achieved. The Department encourages manufacturers to supply complying products as much in advance of the compliance date as possible.

COMMENT: The proposed timetable for manufacture of compliant products is realistic as are the VOS levels. They are both effective and attainable. However, as there is a certain amount of inventory at every step in the manufacturer-distributor-retailer-consumer chain, a time lag between end of manufacture and end of use by the consumer must be allowed. This is particularly important because some slow moving products may stay on the shelf for two to three years. All of these products would have to be destroyed if such a provision is not allowed. Further, unless the prohibition on use is meaningless, all half empty cans of paint in consumers' basements will have to be destroyed. The cost and environmental risk of such disposal is great. Noncomplying products already in the chain of distribution should be "grandfathered" as is done in California, New York, Texas and Arizona.

RESPONSE: In order to reduce the need for disposal of noncomplying products, a "grandfather clause" has been proposed for inclusion in subchapter 23. The coatings in consumers' basements will be indefinitely "grandfathered" and coatings in the chain of distribution will be "grandfathered" for three years. This should be sufficient to greatly reduce, if not totally eliminate, the need to dispose of noncomplying coatings.

COMMENT: It has been suggested paints must be sold within three months or they will go bad. This is not true. Most paints on the market today have a shelf life of more than three years under normal conditions and many can be used even 10 years after manufacture. Further, the time the product actually stays on the store shelf is impossible to predict as it is influenced by many factors including product type, color, container size, aggressiveness of marketing, and improper rotation of stock at the retail level. Other commenters state that climatic conditions (for example, extensive rainy weather) and fashion whims of the public can influence turnover. Estimates of turnover time range from one month to three years. In order to avoid harming innocent people, the rule must contain a "grandfather clause" which is not limited to a specific period of time. Many commenters agree with the proposal that a majority of products are already compliant. Further, as time goes on and the old stock is sold down, the environmental impact continues to be reduced.

RESPONSE: The Department is proposing the inclusion of a three year "grandfather" period elsewhere in this issue of the New Jersey Register. This will allow the necessary time for turnover of even slow-moving stock. The "grandfather clause" will apply to the sale of noncomplying products manufactured prior to the applicable compliance date, while the use of such coatings by consumers will be indefinitely "grandfathered".

COMMENT: The Department has stated a concern that if a "grandfather clause" is added to the rule, retailers, distributors, and manufacturers will stockpile paints. However, stores are not designed to warehouse and manufacturers need to move inventories to pay for their raw materials. Because of the prohibitive cost of inventory space, stockpiling will not occur.

Another commenter states that a three year "grandfather" period for sellers and users would address these concerns while providing the State with assurance that stockpiling will not occur and defeat the effectiveness of the rule. First, manufacturers will not be allowed to ship noncompliant coatings after the applicable deadline. Second, an explicit endpoint to the "grandfather" period will limit how much inventory a retailer or distributor can risk having on hand. Because retailers will have to face a "day of reckoning" when they can no longer sell stockpiled inventory, which does not exist in an open-ended "grandfather clause", there will be a strong disincentive to stockpiling. Lastly, stockpiling, which has been a concern in California, should be limited by the more realistic VOS limits contained in New Jersey's rule. Marketability of replacement products should not be a problem.

RESPONSE: A three year "grandfather" period has been proposed for inclusion in subchapter 23 for noncomplying coatings manufactured prior to the applicable compliance date. The Department agrees that such a measure will reduce the likelihood of stockpiling while allowing distributors and retailers the necessary time to clear out noncomplying products.

COMMENT: A typical independent retailer may stock close to 3,000 different types and sizes of paints, each referred to as a Stock Keeping Unit (SKU). While popular items may turnover in less than a month, slow moving specialty items may take many months or years. Of the 3,000 SKU's, the 15 percent of a dealer's volume which will remain in stock as of the compliance date may actually represent 20 to 25 percent of his SKU's. This is because specialty items generally tend to have a smaller average unit size. Requiring sorting, labeling or disposing of at least 600 different SKU's is not warranted considering the minimal VOS contribu-

tion from these products. Another commenter states a retailer has a total of between 200 and 600 SKU's in the store rather than the 3,000 cited by the previous commenter. However, he reaches a similar conclusion that not all of these will turnover prior to the compliance deadline.

RESPONSE: Elsewhere in this issue of the New Jersey Register, a proposal to include a "grandfather clause" in the rule has been published. The implementation of "grandfathering" for a three year period will reduce, if not eliminate, the need for any relabeling or disposal. It will allow the time necessary to turnover stock to complying products.

COMMENT: Since retail outlets will be most affected by the lack of a "grandfather clause", if an across the board "grandfather clause" is unacceptable to the Department, one commenter offers the following alternative modification to N.J.A.C. 7:27-23.3(c) to provide "grandfathering" for retailers and users only:

(c) The provisions of (a) and (b) above shall not apply to architectural coatings sold in:

1.-2. (No change.)

3. Retail outlets or applied provided the coatings were manufactured prior to January 1, 1990, for Group I coatings and prior to February 28, 1990, for Group II coatings.

RESPONSE: Because of a concern for stockpiling, and difficulties with enforcement, the Department is not proposing an indefinite "grandfathering" for the sale of noncomplying coatings manufactured prior to the applicable compliance date. Instead, the three year period previously referenced is being proposed. However, the use of noncomplying paints manufactured prior to the compliance date will be permitted. That is, an indefinite "grandfather" period will exist for coatings consumers have stored in their basements.

COMMENT: While the original adoption of this subsection stated that there are nine months between the operative date of this rule and the January 1, 1990, compliance data, which should be sufficient to change over inventory, this does not allow time to reformulate, test and manufacture complying replacement products. Products will not be available until July or August t the earliest, which will leave only three months to the end of the outdoor painting season. This is not enough time even assuming complying formulas exist for all products. Even one accidentally remaining container left on the back of a shelf could result in massive penalties.

RESPONSE: A three year "grandfather" period is being proposed for inclusion in the rule. The proposed amendments appear in this issue of the New Jersey Register. The continued sale of noncomplying coatings manufactured prior to the applicable compliance date will be allowed under this "grandfather clause".

COMMENT: The six month period from July 1, 1989, when the New York rule becomes mandatory to the compliance date in the Department rule, is not enough time to completely turnover material in the distribution system. Further it is unnecessary to require such a rapid turnover. Based on the commenter's calculations, using the Department's estimate that 65 percent of products on the market are already compliant for formulation and an estimate by the commenter the 15 percent of dealer inventory will remain on the shelf for more than six months, the amount of noncomplying stock as of January 1, 1990, will be approximately 420,000 gallons. Using an estimated average of an additional 65 grams of VOS per gallon of this noncompliant stock, the commenter arrives at 30 tons of additional potential VOS emissions. Assuming this stock is all used in one year, this 30 tons is approximately one half of one percent of the Department's estimated annual reduction of 5230 tons of VOS. The effect of this requirement is even less when it is considered that the use of these products and therefore the release of the 30 tons will likely be spread over several years, diminishing annually.

RESPONSE: Amendments to subchapter 23 are being proposed which will allow the continued sale of noncomplying products manufactured prior to the compliance date for a period of three years. The Department agrees that the environmental impact will be negligible. The proposed amendments appear elsewhere in this issue of the New Jersey Register.

COMMENT: If a "grandfather clause" is not allowed, the State should provide the means for retailers and others to dispose of what is mostly a hazardous waste in a legal and proper manner at State expense. The retailer should not be expected to lose money on noncompliant inventory and additionally have to pay the high costs of disposal. Also, when disposal is taken into account, more environmental problems may be created. As an example, a gallon of nonflat paint with a VOS content of 3.5 pounds will release that VOS to the environment when used. If this paint is disposed and a complying gallon with 3.2 pounds of VOS bought to replace it, a total of 6.7 pounds (3.5 + 3.2) of VOS is released. All other jurisdictions regulating architectural coatings allow some type of "grandfathering" with alternatives used allowing sale for one year, three years or only banning products manufactured after the effective date. New Jersey should follow the latter method according to several commenters.

RESPONSE: A "grandfather clause" is being proposed for inclusion in the rule elsewhere in this issue of the New Jersey Register. A three year period is being established to allow for the sell-off of noncomplying products manufactured prior to the compliance date. This should greatly reduce, if not eliminate, the need for disposal of any architectural coatings.

COMMENT: The Department should modify the rule to allow for the sale and use of any product already in the chain of distribution which has compliant VOS levels but noncompliant labels. There is insufficient time for revision and reprinting of all labels especially considering that the specific statement required by New Jersey has not been finalized. The alternative to relabeling, stickers, is difficult to control at the point of sale, and very costly due to its labor-intensive nature. Further, until all amendments are finalized, manufacturers, distributors and retailers can take no action. It is anticipated by the commenter that these amendments will not be finalized until November 1, 1989, which leaves much less time than the nine months the Department cites. These products pose no threat to the air and will needlessly be disposed. To accomplish this, the following language for N.J.A.C. 7:27-23.5 is suggested by one commenter:

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3 and manufactured for sale within New Jersey or delivered into New Jersey after December 31, 1989, in the case of Group I coatings and after February 27, 1990, in the case of Group II coatings, the following shall apply:

1.-2. (No change).

3. Effective December 31, 1992, no person shall apply or sell, offer for sale, hold for sale or provide within New Jersey any architectural coating whose label does not conform to the requirements of this section.

4. The provisions of 1 and 2 above shall not apply to architectural coatings sold in New Jersey for shipment and use outside of the State. Documentation including the final destination of coating shipments shall be made available to representatives of the Department upon request.

(b)-(d) (No change.)

RESPONSE: The suggested language is unnecessary. A "grandfather clause" is being proposed for inclusion in the rule elsewhere in this issue of the New Jersey Register. This "grandfathering" will encompass any noncompliance with the rule, including the labeling provisions. Those affected products manufactured after the applicable compliance date will need to have the proper labeling. Those manufactured prior to that date can continue to be sold until February 28, 1993.

COMMENT: The rule places an unfair economic burden on manufacturers by not allowing a "grandfather clause". Because the date of manufacture is not used, as of the applicable compliance date hundreds of stickers will have to be produced for those products in store inventories which are already in compliance. These stickers will have to be placed on the correct container and, due to the manufacturer's liability involved, the application of the stickers will either have to be done by or supervised by manufacturers' representatives. This will monopolize months of representatives' time.

RESPONSE: The proposed "grandfather clause", which appears elsewhere in this issue of the New Jersey Register, will also apply to labeling. There will be a three-year sell-off period to clear out unlabeled products manufactured prior to the compliance date.

COMMENT: Small retail outlets compete with large chains by maintaining a more extensive inventory, including specialty items. The rule imposes a financial and operational hardship on these stores by requiring relabeling or stickering of compliant stock and not allowing sale of noncompliant products in stock. This amounts to retroactive condemnation of the inventories which allow them to compete.

Cited costs include the cost of disposal of thousands of gallons of noncompliant paints which it is not practical or feasible to ship to other states. These costs will be borne by New Jersey consumers according to several commenters. One commenter states the cost would wipe out company profits and reduce State income tax and sales tax revenues. Another states that, in his experience, manufacturer recall of product is not an effective means of assuring that noncomplying products are not sold after the effective date of a rule as only a portion of the product is returned. "Grandfathering" of products as is done in California, Texas and Arizona will eliminate these problems.

RESPONSE: A "grandfather clause" is being proposed for inclusion in the rule elsewhere in this issue of the New Jersey Register.

COMMENT: If a "grandfather" provision is allowed, the rule should permit the manufacturer to use a batch code to indicate the manufacture date. These formats are easy to understand and information is placed on both individual cans and cartons so inspectors would be able to examine storeroom stock at a glance. Consumers prefer the most recent batch regardless of product durability. To require a date explicitly on the can would not only defeat stock rotation, but would also defeat the purpose of the "grandfather" provision as the older stock would be likely to remain on store shelves. Further, time does not allow for relabeling all products. The "grandfather clause" should not require relabeling, but should permit continued sale of products now on store shelves which include the batch code information on the container.

RESPONSE: A provision requiring the inclusion of the date of manufacture or a code indicating the date of manufacture on the label of all architectural coatings is being proposed. This labeling is necessary to determine which containers are "grandfathered" and which are not. However, the same three-year period for turnover of noncomplying products manufactured prior to the compliance data will also apply to labeling requirements.

COMMENT: The proposal of this rule did not contain any information on the volume of noncomplying product in inventories in New Jersey nor predict how many gallons will be discarded and reclassified into hazardous waste. The environmental impact of disposal of hazardous waste and the cost of treating the discarded waste need to be examined. While the commenter states an exact estimate of the number of gallons is difficult, he further states that, with thousands of outlets in the State for architectural coatings, even if each outlet discarded only a few gallons, the potential magnitude of the problem is staggering. There is also a greater potential of land and water contamination due to improper disposal which is likely to happen. Even with proper disposal a burden will be put on municipal disposal authorities.

RESPONSE: The proposal of a "grandfather clause", contained elsewhere in this issue of the New Jersey Register, will greatly reduce, if not eliminate entirely, the need to dispose of noncomplying products as hazardous waste. There will be, therefore, no impact of disposal, and no need to determine how many gallons of noncomplying product may be left at the end of the "grandfather" period.

COMMENT: The term "hold for sale" is too vague and needs to be clarified. What would constitute holding for sale? Would it be a violation for a manufacturer to sell a noncomplying product to a distributor in New Jersey who subsequently sells it to someone outside the State?

RESPONSE: The term "hold for sale" applies to stock not actually on store shelves, but in stockrooms or other storage areas awaiting placement on retail shelves. A distributor who sells his or her merchandise outside of the State is not "holding for sale" in the sense covered by this rule. The rule prohibits holding for sale within New Jersey. The phrase "within New Jersey" modifies the term sale and indicates that products covered are those held to be sold within the State. Manufacturers and distributors who warehouse noncomplying products for sale and shipment outside of the State would not be in violation of subchapter 23 (see N.J.A.C. 7:27-23.3(c)1 and 23.4(b)).

COMMENT: One commenter questions whether the rule prohibits manufacturing for sale within New Jersey any coating containing more than the applicable limit but allows products to be manufactured within New Jersey for sale outside the State.

RESPONSE: The manufacture of noncomplying coatings for sale outside of New Jersey is not prohibited by the rule. Such manufacturing can continue, subject to N.J.A.C. 7:27-23.3(c)1.

COMMENT: The term "excluding water" should be removed from N.J.A.C. 7:27-23.3(a). Latex coatings, which contain large amounts of water, are a much larger portion of coating sales than solvent-borne coatings. The method of VOS calculation specified produces an inaccurate VOS content level when applied to latex coatings. Because of this, the overall emissions which are credited to the coatings industry are much larger than the actual amount of emissions.

RESPONSE: The overall emissions attributed to coatings will not increase because of the means used to calculate those emissions. The "excluding water" calculation is that recommended by USEPA for coatings. It is the method in use in California and New York. By excluding any water in the compliance determination, it is ensured that coatings are not simply diluted with water until they are in compliance. Such a diluted coating would not cover the same surface area as an undiluted one, causing the use of a greater quantity of coating and greater emissions than indicated by the per gallon VOS content.

COMMENT: Documentation of the final destination required by N.J.A.C. 7:27-23.3(c) is massive, unnecessary and cumbersome. It will only impose a financial burden on manufacturers without an offsetting benefit. Instead, New Jersey should do what other states do, where manufacturers are required to provide an explanation of their batch code systems.

RESPONSE: The documentation of the final destination of a given coating is necessary for enforcement at levels other than retail. A manufacturer or distributor must have some means of showing the Department that a noncomplying coating found in their facility is to be shipped out of New Jersey. An explanation of the batch code system will not do this.

COMMENT: One commenter supports the small-size container exemption contained in N.J.A.C. 7:27-23.3(c) because it will assure continued availability of aerosol paints. Several commenters requested a change to this exemption. Some requested quart containers to be exempt, using language such as "less than one liter" or "quarts or less". Others requested an exemption for liter containers, using language such as "one liter or less" in the exemption. One commenter supporting the liter exemption states that an informal survey in California shows that most companies are selling fewer quarts than in the past. The New York rule uses the less than one quart statement because a change to this language was being considered in California. However, California did not revise its one liter or less exemption downward because it would be an imposition on industry, and such a change would not necessarily achieve significant emission reductions because of the small fraction of paint sales small containers represent. National consistency in rules among the states should be sought and the "one liter or less" terminology used.

Others supporting a quart exemption state that to meet the current standards some specialized coatings will have to sacrifice quality and durability. Consumers will be left to buy two pint containers of the higher quality noncomplying product at a premium price, use spray paints which emit significantly more VOS for area coated, paint more frequently to compensate for lower durability products available in larger containers, or find a manufacturer producing the product in a 31 ounce or 0.9 liter container. These results should not be encouraged. In addition, it is stated that the majority of coatings sold in small containers are stains and clear finishes which do not emit a large amount of VOS per unit area covered.

RESPONSE: The exemption for small-sized containers is not being amended. Regional consistency with New York is being retained by maintaining the exemption in its present form. National consistency would not be encouraged by establishing an exemption different from a neighboring state. The recently adopted CARB model rule does contain a one liter exemption, but only for such containers offered prior to the adoption of the rule. CARB is considering reducing or eliminating their small-size container exemption as being more appropriate to the activities envisioned when the exemption was established.

The quality and durability of products available in larger containers is not inferior to noncomplying coatings. Most types of architectural coatings are available in complying formulas that are equivalent to noncomplying formulas. There should be no need to use noncomplying coatings.

COMMENT: If an exemption is not possible for quart-sized containers, a new coating category entitled "rust-inhibitive coatings" should be added with a VOS limit of 3.8 pounds per gallon (0.45 kilograms per liter), the same as "industrial maintenance coatings". This category should be defined as follows: "Coatings formulated with rust-inhibitive ingredients and used to prevent corrosion of ferrous metal substrates."

RESPONSE: Containers of a quart in size are not being exempted. A new category for "rust-inhibitive coatings" is not being added. The Department does not have any information indicating that such a category is necessary. For now, such coatings may fall into categories such as "quick-dry primer, sealer, undercoater" or "non-flat architectural coating" depending upon their characteristics and intended function.

COMMENT: The allowable VOS levels in N.J.A.C. 7:27-23.3 should be described in terms of emissions per square foot of coating coverage. This would allow for specialized products such as the commenter's which protect surfaces from acid rain, environmental pollutants and graffiti, and which cannot be reformulated to meet the standards, while assuring that emissions from actual use are the basis of regulation. If this is unacceptable, due to the important functions it performs in protecting exteriors of structures and reducing costs of cleaning, maintenance and restoration of these surfaces, a category should be established for the commenter's product with an allowable VOS limit of 8.0 pounds per gallon (0.95 kilograms per liter). Another commenter requests a category for "industrial maintenance anti-graffiti coatings" with a VOS limit of 5.0 pounds per gallon (0.60 kilograms per liter).

RESPONSE: The square feet of coverage obtained from a given gallon of coating will vary, dependent upon the user and the application to which

it is put. The purpose of excluding water when determining compliance is to ensure that a coating is not made to comply by dilution with water. Simply diluting the coating will reduce the coverage of the coating, requiring the use of more paint to coat a given area. So, to that extent, coverage is considered.

As for using coverage as a compliance criterion, compliance with such a standard would be difficult to determine. It does not seem likely that a product such as the commenter's, which has a very high solvent content, would contain much solids and thus would not cover a very large area. However, if the coating is a two component system, compliance will be determined for the as-applied coating; that is, after the components are mixed. The Department has no information justifying an allowable VOS limit of 8.0 pounds per gallon (0.95 kilograms per liter) for the one commenter's product or for establishing the "industrial maintenance anti-graffiti coating" category requested by the other. From information available to the Department, it appears that these are two component systems and compliance for such coatings will not be determined by testing individual components, but by testing the proper mixture.

COMMENT: Certain products cannot meet the current VOS standards and allowances should be made for these products. One problem is the VOS standard for primers. One asphalt based primer is specified by housing authorities as a primer for damp roofing and by other agencies for road work and cannot meet the 2.9 pounds per gallon (0.35 kilograms per liter) standard in the rule. High performance waterproofing primers have a similar problem because of the need to have quick-dry materials with very low resin content. Bituminous coatings, which are provided for as a separate category in the California rule and are used as cements and damp roof coatings, are not provided for in the New Jersey or New York rules. Additionally, waterproof or water repellant coatings made with a silicone solution become gummy and are not effective if they are more than ten to twelve percent silicone. This will not be available if the rule goes into effect.

RESPONSE: Asphalt products used in roadwork are subject to N.J.A.C. 7:27-16.7, not N.J.A.C. 7:27-23. Therefore, there is no need for such products to meet any standard contained in subchapter 23.

There are roof coatings available which can meet the established VOS content limit. A survey performed in California in 1984 indicated that 90 percent of roof coatings sold in that state contained less than 2.5 pounds per gallon (0.30 kilograms per liter) of VOS. The 1985 survey performed in New Jersey does not break down categories sufficiently to determine similar information. However, it is reasonable to assume that an equivalent percentage of coatings will be in compliance in New Jersey.

Waterproofing coatings are subject to the "waterproofing sealer" or "waterproof mastic coating" standard, not the "primer, sealer and undercoater" standard. A separate category for bituminous coatings is not provided in the recently approved CARB model rule.

COMMENT: The wood preservative category should be amended to include a "clear wood preservative" category with a VOS limit of 6.1 pounds per gallon (0.73 kilograms per liter).

RESPONSE: The Department has no evidence supporting a "clear wood preservative" category with a VOS limit of 6.1 pounds per gallon (0.73 kilograms per liter). The present general category of "wood preserative coating" with a VOS limit of 4.6 pounds per gallon (0.55 kilograms per liter) is the same as that in effect in New York, and is less strict than the 2.9 pounds per gallon (0.35 kilograms per liter) recommended by CARB.

COMMENT: Does the proposed 5.7 pounds per gallon VOS limit for lacquers include those used in the leather industry as well as industrial coatings?

RESPONSE: Subchapter 23 does not apply to finishes used by manufacturers in the process of making a product. The types of lacquers covered are those used on floors, woodwork, or furniture in people's homes or offices. The use of lacquers by manufacturers is covered by N.J.A.C. 7:27-16.5.

COMMENT: Waterproofing sealers are used to prevent penetration of water through porous surfaces. To comply with this rule, a waterborne material would be required which introduces water into the surface the product is trying to prevent water from entering.

RESPONSE: This comment was made on the initial proposal, and for that reason, the proposed VOS limit of 3.3 pounds per gallon (0.40 kilograms per liter) was not adopted and the more appropriate level of 5.0 pounds per gallon (0.60 kilograms per liter) has been established. The commenter did not provide information indicating that this level is inappropriate.

N.J.A.C. 7:27-23.4 Air fresheners

COMMENT: The Department has stated that the public hearing was limited to consideration of certain changes in the rule. However, this proceeding is a continuation of the rulemaking initiated by the Department on August 15, 1988, and a change in the effective date of the prohibition against sales of air fresheners having more than 50 percent VOS content is within its scope. In support of this, the commenter summarizes the proposed changes and points out that the full text of the proposal included the regulatory language which specifies the effective dates of the prohibition against sales of both noncomplying architectural coatings and air fresheners. Further, the commenter states that a variety of comments were accepted on issues previously adopted and not proposed for change including addition of a "grandfather" provision, label statements, placing statements on the container rather than on labels, and recordkeeping provisions without Department objection. This comment and the issue of the effective date of air freshener provisions is both appropriate and lawful for the Department to hear. The original August 15, 1988, proposal notice supplemented by the May 1, 1989, proposal notice makes consideration of these comments appropriate for substantial compliance with the Administrative Procedure Act, N.J.S.A. 52:14B.

RESPONSE: The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., mandates that the agency proposing a rule or rule amendment consider fully all written and oral submissions respecting the proposed rule or amendment. In this case, the rulemaking initiated on August 15, 1988 went through the required process and culminated with adoption of a final rule on January 26, 1989 (see N.J.R. 462(a)). At that time, the rulemaking action on those provisions adopted became final.

On May 1, 1989, the Department proposed amendments to the existing provisions of N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, at 21 N.J.R. 1055(a). This proposal was not a continuation of the prior rulemaking, but was a distinct new proposal of additions and amendments to the existing final rule. The synopsis of existing requirements or reference to past rulemaking in the summary section of the proposal in no way affects the status of this action as a new proposal. It is on the amendments contained in this proposal that the Department is mandated to accept and consider comments, not on existing provisions promulgated by prior rulemaking.

While not required to accept comments on subjects other than the proposed amendments, in practice the Department attempts to consider and address as part of the rulemaking process comments received on all issues where such consideration is not so undue or burdensome as to negatively impact or delay implementation of the amendments which were proposed. In accordance with this practice, the Department has included and responded to all comments received during this rulemaking process.

COMMENT: The section of the rule dealing with architectural coatings may be consistent with New York and other areas, but that dealing with air fresheners is not. There is a need for consistency in state regulation of items in interstate commerce. For this reason the implementation of the 50 percent VOS content rule for air fresheners should be deferred. New Jersey should adopt a rule similar to that in effect in New York. No other Federal, state, or local agency regulates the VOS content of air fresheners.

RESPONSE: N.J.A.C. 7:27-23.4, the section of subchapter 23 dealing with air fresheners, may not be exactly what is in the New York rule, but it is not incompatible. At the present time, NYDEC requires that manufacturers of air fresheners perform studies to determine ways of reducing the VOS content. From the information available to the Department, it is evident that products can be formulated with 50 percent or less VOS by weight. Therefore, the Department believes this approach to be more appropriate than that taken in New York.

COMMENT: The February 28, 1990, date in N.J.A.C. 7:27-23.4(a) provides less than 12 months for total compliance. The whole chain of distribution cannot be in compliance in such a short time. A fair and equitable date for compliance is required.

RESPONSE: This rule was originally adopted on January 26, 1989, and published in the New Jersey Register at 21 N.J.R. 462(a) on February 21, 1989. At that time, N.J.A.C. 7:27-23.4(a) appeared substantially as it does now. Therefore, 12 months were provided for compliance. The Department believes the 12 months provided to the manufacturers is sufficient to reformulate and relabel products to be in compliance with the rule, particularly since many formulations are already below the 50 percent VOS content limit.

However, although the Department believes 12 months is sufficient to ensure the production of complying air fresheners, including labeling, it

may not be enough to ensure total turnover in the chain of distribution. In order to allow the orderly depletion of stock already in the distribution chain, a "grandfather clause" has been proposed to be added to the rule. Manufacturers must comply by February 28, 1990, but distributors and retailers have until February 28, 1993, to clear out all noncomplying products.

COMMENT: No allowance has been made in N.J.A.C. 7:27-23.4 for air fresheners already in the channels of trade as of the effective date of the rule. Further, with the addition of "hold for sale" to this section, the restriction is greater as noncompliant products intended for sale in the State on store shelves and in warehouses will have to be removed. Because of this, noncompliant products will have to be discarded or returned to manufacturers and distributors to be sent to other states. The costs in terms of paperwork, man hours and additional freight costs will be enormous. USEPA allows a two year period for products to pass through normal channels of trade when requiring changes and the Department should provide a similar period to eliminate confusion and excessive costs. This will additionally allow consumers to use products previously bought without being in violation of the rule. As the commenter in another comment states the compliance date for these products should be amended to February 28, 1991, it is suggested this "grace period" end February 28, 1993. To allow manufacturers sufficient time to reformulate to below 50 percent VOS and time for noncomplying products already in distribution to be depleted, the language in N.J.A.C. 7:27-23.4 should be changed to read as follows:

(a) Effective February 28, 1991, no person shall manufacture for sale within New Jersey any air freshener which, at the time of manufacture, contains greater than 50 percent VOS by weight.

(b) Effective February 28, 1993, no person shall sell, offer for sale, hold for sale to consumers within New Jersey any air freshener which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

RESPONSE: The Department does not see a need to extend the compliance date for the manufacturing of complying products. However, sufficient time for turnover of those noncomplying products already in distribution is needed. Therefore, a "grandfather clause" is being proposed for addition to the rule. It would allow the continued sale of noncomplying products manufactured prior to February 28, 1990, until February 28, 1993.

COMMENT: A small-size container exemption should be considered for air fresheners.

RESPONSE: It is not appropriate to have a small-size container exemption for air fresheners. The majority of air fresheners fall into a range of sizes between seven and eight ounces. Most products smaller than this are marketed in forms that comply with the rule. The commenter did not suggest an appropriate size and the Department sees no need for an exemption for any size container of air freshener.

COMMENT: One commenter states that, unless the air freshener portion of the rule is deferred, his product, which is the only significant air freshener product affected by the rule, will be eliminated from the marketplace. This product emits less than 5/100 of an ounce of VOS per day per average user which is insignificant compared to unregulated VOS emissions of insecticides, disinfectants, air fresheners with less than 50 percent VOS content, and other household and commercial products in everyday use. As the product cannot be reformulated to meet the 50 percent standard on any reasonable economic basis, a severe financial loss will be felt by the company due to loss of the New Jersey market and citizens of the State will be deprived of a uniquely designed product without any measurable air quality benefit. The commenter estimates sales of his product in the State in 1988 to amount to approximately 50 tons which is miniscule compared to other categories including personal products (3,447 tons). Regulation of such a small emission is highly problematic, if not unlawful.

RESPONSE: More than one product will be affected by this rule. Almost all air fresheners are subject to the labeling requirements. There are at least four formulations for air fresheners that will need to be reformulated or removed from New Jersey markets. In addition, the rule will prevent the introduction of new high VOS content products in New Jersey, which will help prevent future deterioration of air quality in the State.

Control of the larger sources of VOS emissions has already occurred, but the NAAQS for ozone continues to be exceeded in New Jersey. In order to continue making progress towards achieving the NAAQS for ozone, it is necessary for the Department to consider and regulate small sources of emissions, such as various types of consumer products.

COMMENT: Aerosol air fresheners serve a different purpose than solid or liquid air fresheners. Solids and liquids are best used for persistent low intensity odors while aerosols are ideal for removing odors of relatively high intensity, but short duration. Aerosols containing more than 50 percent VOS may in use emit less VOS than the lower content level solids as aerosols are used only as needed and in very minute quantities.

RESPONSE: There are aerosol air fresheners available that contain less than 50 percent VOS. The unique functions performed by aerosols will not be eliminated by this rule.

COMMENT: The 50 percent VOS limit for air fresheners is not necessary to prevent new air fresheners with higher than 50 percent VOS from being introduced. The great majority of air freshener sales in New Jersey in 1988 consisted of solids, liquids, or aerosol sprays utilizing water as a carrier. All of these have less than 50 percent VOS content. The small amount of "dry-aerosol" sprays still on the market have more than 50 percent content typically, but the commenter indicates it is his understanding these have not won widespread consumer acceptance and are being withdrawn independent of New Jersey's rule. As VOS constituents are typically more expensive than alternatives, their use in consumer products is economically self-limiting since these products would have to be priced higher than the alternatives.

RESPONSE: While it may be true that air fresheners containing greater than 50 percent by weight VOS are being phased out of the market because of relative cost and consumer preference, the Department cannot depend on these factors to totally eliminate such products from the market. The rule ensures the end of sale of high VOS content air fresheners in New Jersey within a shorter time span than market forces would support.

COMMENT: Non-VOS propellants are being developed which should reach the market in one to two years and which are much more reasonably priced than presently available alternatives. To provide sufficient time to make an economically feasible reformulation of air fresheners and conduct toxicity tests, a two year delay in the effective date of the rule is necessary.

RESPONSE: There is a wide range of complying products available now. The Department sees no need to extend the compliance date of the rule.

COMMENT: There is not a sufficient scientific basis for a rule on air fresheners. The 1987 Science Applications International Corporation (SAIC) study is inappropriate as a basis for rulemaking. The SIP requires the Department to "examine current air quality methodology and data" and to complete "evaluation of extraordinary control measure technologies" before proposing product specific rules. This has not been done. The SAIC study cited by the Department provides no basis for deciding these limits are the most effective control strategy and that these strategies would be an effective control solution. The study provides no benefit or cost analysis.

RESPONSE: The SAIC study was specifically done to help in the development of rules for consumer products. The introduction to the work plan for the study states: "The purpose of this Work Assignment is to identify, descibe and assess alternative control strategies for controlling Photochemically Reactive Organic Compound (PROC) emissions from specific consumer product categories in the State of New Jersey and the New York City metropolitan area. The goal of the analysis is to provide as much useful information as possible in those subject areas relevant to possible future State decisions on control of emissions from consumer products." The study was never intended to be exhaustive, but to provide a foundation for rule development. The study is generic in its approach, which limits its usefulness in some instances.

The current air quality data indicates the necessity of implementing the extraordinary measures. New Jersey has yet to attain the NAAQS for ozone. The extraordinary measures were evaluated prior to their inclusion in the SIP. In the years since the SIP was developed, no new strategy for controlling VOS has been identified as a replacement for product specific rules on consumer products.

The SAIC study contained some information on costs. The benefit is indicated by the amount of emission reduction that could be expected from different control strategies. This information, in conjunction with other sources, including information submitted during the public comment period of the initial proposal, provides sufficient basis for this rule.

COMMENT: Review of the SAIC study, which was the basis for the Department's original proposal estimate of 3,300 tons of VOS emission reductions as a result of VOS limits on air fresheners and consumer insecticides, shows no basis to conclude that a 50 percent VOS limit for air fresheners will have any measurable effect on air quality. The study

estimates tht of the 3,300 tons, 2,109 tons are attributable to consumer insecticides, 912 tons are attributable to a particular air freshener/disinfectant spray, and 262 tons are attributable to aerosol sprays having a VOS content of less than 50 percent. Regulation of all of these products has been deferred by the Department. Also, the SAIC study indicates a single product with more than 50 percent VOS content accounts for approximately 210 tons of VOS emissions. The commenter disputes whether the product cited by the study indeed contains more than 50 percent VOS, but even if it does, the study does not show any measurable effect to be achieved by the regulation of products with over 50 percent VOS. In relation to other categories, including VOS emissions from vehicular and industrial sources in the State which emit well over 500,000 tons each year, this category has insignificant emissions. The Department has acted too quickly and without adequate factual support in adopting this rule.

RESPONSE: By itself, the regulation of air fresheners may not appear to make a measurable difference in air quality. However, as a part of the range of VOS control measures included in the SIP, limiting the VOS content of air fresheners is an important aspect of overall reductions in VOS emissions.

The information included in the SAIC study is not exhaustive. The data on air fresheners represents only about one half of all air freshener products sold in New Jersey. There are more than one product that will be affected by the rule. So, although the SAIC study lists only one air freshener with greater than 50 percent VOS, it is very likely there are others.

As for the one product listed in the study as containing more than 50 percent VOS, the Department has additional information indicating that this is correct.

When compared to total emissions from mobile and industrial sources, air freshener VOS emissions look very small. However, most industry is already subject to rules on VOS emissions, and federal standards on cars have reduced emissions from mobile sources. Also, when emissions of VOS from air fresheners are compared with the VOS emission reductions necessary to attain the NAAQS for ozone, they do not look so insignificant. A reduction of 61,400 tons of VOS per yer has been determined to be necessary for attainment of the NAAQS for ozone.

COMMENT: One commenter requests that all data submitted by his organization on air fresheners for the previous proposal be considered part of this record in order to ensure that adequate data exists for decision making.

RESPONSE: The comments submitted on the previous proposal follow.

The remaining comments on N.J.A.C. 7:27-23.4 were submitted for the previous proposal, and, with comments contained elsewhere in this document, represent the data requested to be included by the above commenter.

COMMENT: The proposed rule will not show any actual improvement in environmental quality. The products make an insignificant contribution to total atmospheric VOS and any alternate product formulations or forms will require substitution of the same or more reactive ozone-producing VOS.

RESPONSE: The NAAQS for ozone continues to be exceeded in New Jersey. This rule of air fresheners is needed as part of the range of rules required to reduce VOS emissions into the atmosphere, consequently reducing the formation of ozone. As a strategy contained in the SIP, the importance of the contribution of controlling the VOS content of consumer products has already been established.

In order to be in compliance with the rule, alternative product formulations or forms cannot contain the same amount of VOS as noncomplying products. Therefore, there will be a reduction in the amount of VOS contained in the affected products.

COMMENT: The statement that "aerosols are the only form (of air freshener) containing greater than five percent VOS by weight" is incorrect.

RESPONSE: The information available to the Department at the time of the initial proposal indicated that only aerosol forms of air fresheners contained greater than five percent VOS. However, information received since that time indicates that a wide range of VOS content levels exist for a wide range of product forms. It was determined that a 50 percent VOS level is appropriate at this time, and any further reduction in this allowable level was deferred.

COMMENT: The rule will have an enormous cost impact on New Jersey industry and employment. An analogous situation occurred with the banning of chlorofluorocarbons, which cost over a billion dollars in 1976 dollars to eliminate. This cost was reduced as an alternative was available which does not exist here. The rule is clearly not cost effective. A study in California found costs to be in the range of $30,000 to $98,000 per ton of VOS removed.

RESPONSE: The cost of reformulation is difficult to determine for industry as a whole. Some products are already in compliance and need no reformulation. There are alternatives available.

The cost of this measure is relatively high. In the effort to control ozone, the point has been reached where costs will be high and the average consumer's life will be affected. However, these measures are necessary to achieve progress towards attainment of the NAAQS for ozone.

COMMENT: Labeling requirements which are different for New Jersey will impose on interstate commerce and create havoc in the distribution process.

RESPONSE: The labeling requirement contained in N.J.A.C. 7:27-23.5 serves the valuable function of providing information on the relative amounts of VOS in products and allows consumers the opportunity to use this information in making purchasing decisions. The required information is supplemental to that already contained on the label and the Department is aware of no other requirements which would prohibit provision of this information in other states. The rule of which this provision is an important component does not discriminate affirmatively against interstate transactions, places only an incidental burden on interstate commerce, and is well within the Department's authority and duty to protect public health and the environment. The Department believes any burden imposed by this requirement is minimal.

Since the original proposal to which this comment was made, the Department has modified the requirements of this section to facilitate compliance while assuring adequate information continues to be provided. To allow flexibility, manufacturers are now allowed to use terms other than VOS provided the content level cited reflects VOS content. Additionally, in this issue of the New Jersey Register it is proposed that statements other than the specific wording required currently be acceptable provided the relavent information is provided.

COMMENT: VOS are generally one of the most expensive components of any commercial or consumer product formulation and, because of economics, are already at the lowest level possible while maintaining efficacy. A further limit will result in a ban of necessary and useful products many of which provide public health benefits.

RESPONSE: There are products on the market which perform the same function, but which have a wide range of VOS content. If all manufacturers had reduced VOS content as much as possible, there would not be such a wide range. Products where the VOS is necessary, such as certain types of insecticides, have a much smaller range of VOS, generally being only one or two percentage points. It appears, however, that a general sweeping statement declaring that VOS has already been reduced as much as possible is inaccurate.

COMMENT: The projected emission reduction of 3,300 tons per year is overstated and the actual effect may not be measurable. Consumers in all likelihood would obtain these items by traveling outside the State and smuggling them into New Jersey. The exhaust emissions from these additional consumer trips could worsen the situation further.

RESPONSE: The emissions reduction prediction of 3,300 tons per year was for both air fresheners and consumer insecticides. The projected emission reduction for the rule as adopted is 214 tons per year. It is not anticipated that there will be increased vehicle trips because of this rule.

COMMENT: The proposed rule will have a large cost for consumers and will result in seven billion less aerosol sales alone in the State each year.

RESPONSE: It is not anticipated that there will be a large loss in sales overall. There are complying aerosols on the market. Consumers who wish to purchase air fresherners will simply choose complying products. Some few may forego air fresheners rather than change products, but the Department does not believe a majority of consumers will do so.

COMMENT: Air fresheners/disinfectants are important in controlling the spread of infection. For most products used in health care institutions, there are no alternative products. This will compromise the ability of the health care institution to maintain safe, clean, and healthy conditions in the environment.

RESPONSE: Disinfectants are not subject to N.J.A.C. 7:27-23.

COMMENT: Many disinfectants are air fresheners and so state on their label. It is not possible to separate these products.

RESPONSE: Disinfectants are required to be registered as pesticides under FIFRA. Air fresheners are not. Therefore, the separation of these products is possible.

COMMENT: The proposal will virtually eliminate aerosols.

RESPONSE: There are many aerosols on the market that contain less than 50 percent by weight VOS. Aerosol air fresheners will not be eliminated by this rule.

N.J.A.C. 7:27-23.5 Labeling requirements

COMMENT: One commenter supports labeling as a means for consumers to find out about hazardous constituents of products and to choose less hazardous formulations in furtherance of right-to-know goals.

RESPONSE: The Department appreciates the support and agrees that labeling can be a tool for consumer education and use.

COMMENT: The rule should state that architectural coatings manufactured prior to the compliance date that comply with all requirements except labeling can continue to be sold. Manufacturers cannot begin to label with compliant labels in advance of the compliance date until the labeling rules are finalized. Once they are finalized, at least six weeks are required to change printing plates for lithograph cans and labels during which time the old labels will have to continue to be used. The cost of stickers, new labels, plate changes, and manpower to relabel already complying products makes this requirement a great financial burden on all manufacturers and distributors.

RESPONSE: The "grandfather clause" being proposed for inclusion in the rule will also apply to the labeling requirements for thinning recommendations, VOS content and date of manufacture or batch codes. Products in the distribution chain manufactured prior to the applicable compliance date will not be required to be in compliance until February 28, 1993. The adoption of the original labeling requirements was published in the New Jersey Register in February 1989. As labels complying with the initial requirements will also comply with the revised requirements, the Department sees no need to amend the compliance date for manufacturers to allow additional time to produce the necessary labels.

COMMENT: N.J.A.C. 7:27-23.5(a) should be changed to read "the container or a sticker affixed to the container shall carry the following statement:". Other recommended language included "the label or container shall carry the following statement:". This would be consistent with other states which have rules in place or imminent (California, Texas, New York and Arizona) which refer to the "container" and not the "label". This would allow companies to place necessary information on the lid by video-jet or similar marking systems and would allow rapid changes in information printed on products when VOS content or other things change without the need to destroy costly label inventories. This change would accomplish the intended purpose without burdening industry unnecessarily.

RESPONSE: In proposed amendments which appear elsewhere in this issue of the New Jersey Register, a definition of "label" is being added to the rule. This definition will allow for the placement of information directly on the container as well as on anything affixed to the container to qualify as being on the label. However, to ensure that relevant information is readily discernible to consumers, the location (that is, side or top of the container) of certain information is being specified. This allows some flexibility while ensuring that the label fulfills the intended purpose.

COMMENT: Manufacturers who produce products at ready-to-use application viscosity should not be required to put instructions on the label telling users not to thin. If thinning is not recommended on the label, it is not going to change the VOS content of the product. One commenter states that where thinning may alter performance, labels state that no thinning should occur.

RESPONSE: A statement indicating that no thinning should be done is a recommendation for thinning and fulfills the requirements of this provision. At the same time, this statement reduces the possibility that a consumer will add VOS solvents to the coating, thereby increasing emissions from the use of the coating, and perhaps decreasing the product's performance. The lack of any statement on the label will not necessarily convey to the consumer that thinning should not be done. Therefore, a statement telling users not to thin the coating must be included.

COMMENT: N.J.A.C. 7:27-23.5(a)1 should be modified to exempt waterborne products from the thinning statement requirements as is done in New York, California districts, and Arizona. The Department's concern that these products might be thinned with VOS is unfounded. The quality of the coating could be destroyed and VOS reducers must be purchased while water is free and readily available. To accomplish this the sentence "This requirement does not apply to thinning of architectural coatings with water." should be added to N.J.A.C. 7:27-23.3(a)1.

RESPONSE: The Department believes it is important that thinning instructions be included to reflect the fact that the product is only to be thinned with water and not a VOS. The statement required, if not already present, should be simple and any burden will be minimal. There is no way to ensure that VOS will not be used to thin a coating if no recommendation is given. The inclusion of a short phrase, such as "Thin only with water." should not pose any problem to manufacturers.

COMMENT: N.J.A.C. 7:27-23.5(a)1 should be modified to require the following thinning recommendation:

"The coating is to be employed without thinning or diluting under normal environmental and application conditions unless any thinning recommended on the label for normal environmental and applications does not cause a coating to exceed its applicable standard".

This statement would further national consistency as California uses it. Further, some companies already use this on their labels. To require something different would cause burdensome labeling conflicts.

RESPONSE: The language in N.J.A.C. 7:27-23.5(a)1 is substantially similar to that contained in the CARB model rule. The information required to fulfill this provision is virtually the same in both states. The language suggested by this commenter is not required to appear on the label in California, but simply indicates what information is to be put on the label. Subchapter 23 requires the same information to appear on the container.

COMMENT: One commenter did not understand N.J.A.C. 7:27-23.5(a)2i. He states that in the adoption document it appears to be an incomplete sentence.

RESPONSE: The section cited is to be read as a whole sentence. N.J.A.C. 7:27-23.5(a)2i says:

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

2. The label, or a sticker affixed to the label shall carry the following statement:

This product contains a maximum of x pounds of VOS per gallon of coating."

i. Where x is the maximum pounds of VOS in a gallon of the architectural coating as produced by the manufacturer, excluding water and after any recommended thinning.

The subordinate clause contained in subparagraph (a)2i describes what the x in the required label statement means.

COMMENT: The term Volatile Organic Compound (VOC) should be allowed to replace or be interchanged with the term VOS on product labels. To require VOS would be an unnecessary burden which serves no purpose in improving air quality.

RESPONSE: With the adoption of N.J.A.C. 7:27-23.5(c), the term VOC can be used in place of VOS as long as the organic chemicals used in the formulation of the product meet the definition of both VOC and VOS as defined in N.J.A.C. 7:27-23.2.

COMMENT: One commenter questions why New Jersey and New York cannot have identical labeling requirements. The VOS content should be allowed to be expressed in grams per liter or pounds per gallon to be consistent with New York and other states, and to avoid the substantial additional cost of the dual labeling. A simple "Max VOC = x gm/l" anywhere on the container should be sufficient. It conveys essentially the same information as the New Jersey "required statement" of pounds per gallon. The required statement is too wordy and restrictive and may not be acceptable in other states. It will be extremely difficult to meet all the variations that individual states might feel will enhance their programs. Several commenters state the rule should contain language such as: "Containers for all coatings subject to N.J.A.C. 7:27-23.3(a) must display the maximum VOC content of the coating, expressed as grams of VOC per liter of coating excluding water and any colorant added to tint bases." Several commenters state that the proposed amendment to the labeling requirement allowing the use of terms other than VOS provides sufficient flexibility to meet the requirements of all areas. Other commenters support language requiring VOS information, but not any specific statement.

RESPONSE: The Department is proposing to eliminate the required statement on VOS content in a proposal which also appears in this issue of the New Jersey Register. However, the VOS content still must be displayed in pounds per gallon. The Department believes that pounds per gallon is more readily understood by the consumer than grams per liter.

As to previously labeled products, any coating manufactured prior to the applicable compliance date of the rule is being proposed for "grandfathering". Such "grandfathering" would also apply to the labeling.

COMMENT: To label or sticker only stock bound for New Jersey destinations with a special statement is impractical as one commenter alone has warehouses containing well over a half-million gallons of paint products packaged in cartons. Opening every carton destined for New

Jersey to relabel would cost thousands of dollars in time wasted while conveying no additional information. Another commenter states that it would be impractical to resticker products to be sold in New Jersey. Other commenters similarly state a clarification or change is necessary. This is particularly important as a specific label statement for inclusion on products registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) would require submission to USEPA for approval which can take six months or more making the 1990 deadline impossible to meet.

RESPONSE: The Department believes that with the changes proposed to the labeling requirements and the proposed inclusion of a "grandfather clause" appearing elsewhere in this issue of the New Jersey Register, there will be no need for a different label in New Jersey or for opening cartons to relabel or sticker. Also, N.J.A.C. 7:27-23.5(d) allows for an exemption for FIFRA registered products to give manufacturers the time necessary for obtaining approval for label changes.

COMMENT: N.J.A.C. 7:27-23.5(b) requires listing of VOS if it is more than five percent by weight of the product. This is not required in any other state and should be dropped for national consistency.

RESPONSE: N.J.A.C. 7:27-23.5(b) applies only to those products subject to N.J.A.C. 7:27-23.4. At this time, air fresheners are the only products affected. No other state has any requirements on air fresheners and there is, therefore, nothing to be consistent with. The provision has not been dropped, but it is being amended in a proposal that also appears in this issue of the New Jersey Register to clearly indicate that air fresheners are the affected product.

COMMENT: One commenter supports the use of the term VOC provided it meets New Jersey's definition of VOS, as such use eases interstate commerce. Another commenter expresses support because it will be easier to ensure that proper labels are on containers marketed in New Jersey.

RESPONSE: The Department appreciates the support of an action taken to ensure compliance while easing the burden on industry.

COMMENT: N.J.A.C. 7:27-23.5(c) should be clarified to allow use of statements used in other states as is apparently the Department's intention. This will further promote regional uniformity and encourage sale of compliant products at the earliest possible date. The following wording is suggested:

(c) For labeling purposes only, statements other than those required in N.J.A.C. 7:27-23.5(a) and (b) may be used provided that essentially similar information is conveyed and the volatile organic content level cited on the container is an accurate reflection of VOS content as defined in the subchapter.

RESPONSE: The Department is concerned with comparability of information. Therefore, certain information must be required. The specific statements of VOS content presently included in the rule are being proposed for deletion in amendments that appear elsewhere in this issue of the New Jersey Register. However, the pounds per gallon of VOS for architectural coatings and the maximum percent by weight VOS for air fresheners are still being required. This is to ensure that consumers reading the labels can easily understand the information and compare products. Allowing the use of any statement that provides "essentially similar information" does not guarantee a comparable statement on all products, places a burden on the Department to determine if a statement is "essentially similar", and leads to uncertainty for the manufacturer until such a determination is made.

COMMENT: Allowing terms other than VOS for labeling purposes under N.J.A.C. 7:27-23.5 is supported. However, until this amendment is adopted, manufacturers cannot risk making label changes to include the required statement. The commenter cites costs which approximate $50,000 for their company and consumer confusion if subsequent changes to the label are required as reasons why the company must be sure of the acceptability of the label before beginning the modification process. Given the lead time necessary to implement label changes in a cost efficient manner, by the time these amendments are adopted there will be insufficient time to comply with the February 28, 1990, deadline. To allow time for labeling and for any necessary reformulation of air fresheners to meet the 50 percent standard, the Department should amend the rule's compliance date to February 28, 1991.

RESPONSE: The original labeling requirements were adopted in January 1989, and published in the New Jersey Register in February 1989. This allowed 11 to 12 months for the development, printing and use of complying labels. Labels that comply with the initial requirements would still comply with the amended requirements, therefore the Department sees no need to amend the compliance date.

COMMENT: Is there any difference in calculating VOS versus VOC, and if so, what is the procedure?

RESPONSE: The only difference in determining VOS versus VOC is what chemicals are included or excluded. For example, when establishing the VOC content of a product in some states, methylene chloride would be subtracted because it is an exempt solvent. For a VOS determination it would be left in, because it is not exempt from the Department's definition of VOS.

COMMENT: N.J.A.C. 7:27-23.5(d) should be deleted because of premption by FIFRA's labeling provisions. The labeling of FIFRA registered products is federally regulated and it is inappropriate for any state to require any label changes.

RESPONSE: N.J.A.C. 7:27-23.5(d) does not require a product to be relabeled in violation of FIFRA, rather it requires the manufacturer to submit an application to USEPA for necessary approval of label amendments. New Jersey is not the first state to require application to USEPA for label changes on FIFRA products. Both New York and California also require amendment applications to be made. The change requested is minor and the information the change will convey is appropriate.

COMMENT: In the interest of clarity, N.J.A.C. 7:27-23.5(d) should be modified to read "the provisions of this subchapter shall not apply . . ." rather than the current "the provisions of (a) and (b) above shall not apply . . ."

RESPONSE: There are provisions of this subchapter which do apply to products that are registered under FIFRA. For example, there is a standard set for "wood preservative coating", which is a FIFRA registered product. Therefore, stating that "the provisions of this subchapter shall not apply" is incorrect. The suggested change has not been made.

COMMENT: In N.J.A.C. 7:27-23.5(d), a six-month compliance schedule should be included after USEPA approves an amended registration. This gives the manufacturer and distributor time to produce and distribute the new product and remove the old product.

RESPONSE: The Department agrees that some time period is needed after approval for changeover to use of the new label. Such a period is being proposed with the amendments that appear elsewhere in this issue of the New Jersey Register.

N.J.A.C. 7:27-23.6 Recordkeeping

COMMENT: With the exception of the maximum VOS levels, all information required by the recordkeeping requirements of N.J.A.C. 7:27-23.6 is present on the packing list already used. Addition of a column to the packing list to reflect VOS content of particular products will be confusing when it is placed beside the product code numbers, warehouse location, product names, quantities ordered/shipped and DOT codes (where applicable) and other information already on the packing list. The commenter states that the same purpose could be better served by requiring a statement of compliance on each order. This would place the same responsibility on manufacturers and distributors and would not hamper enforcement. To accomplish this the commenter suggests that N.J.A.C. 7:27-23.6(a)1 and 2 be modified to require the manufacturer to:

1. Document the compliance of the consumer product.
2. Maintain records regarding the consumer products leaving the facility including the statement of compliance.

Similarly, N.J.A.C. 7:27-23.6(b) should be modified to require distributors to ". . . maintain records regarding the consumer products leaving the facility including the statement of compliance, . . .".

RESPONSE: The proposed amendments did not include any changes to the recordkeeping section. However, the Department has been considering the required recordkeeping and is proposing some changes in amendments that appear elsewhere in this issue of the New Jersey Register. These changes take into account information and suggestions submitted to the Department by this commenter and other commenters, while maintaining the important enforcement aspects of recordkeeping.

COMMENT: Recordkeeping requirements contained in the rule impose an unreasonable burden on manufacturers. Manufacturers have information on the maximum VOS content of all their products which could be provided to the Department. Normal invoices show the amounts of various products shipped to their customers, so it is unnecessary for each shipment to be documented as it leaves the facility. This information is of no use to the retailers. Other commenters state the product content is required on the label and should be sufficient. Unless a need is justified, this requirement should be deleted. For companies with no distribution location in New Jersey it is further impossible to determine what is sold in New Jersey.

Additionally, one commenter states that maintenance of records at a plant site or distribution center will not track shipment in New Jersey, as, due to the distribution system, it is impossible for them to know where the product will be sold. The Department should look at what infor-

mation is needed to insure compliance and enforcement. Essentially, obtaining and using a noncomplying product is prohibited with the sale or offering for sale of such products being subject to stiff penalties. It is unnecessary to attempt to track the shipping history of a product or investigate records of each manufacturer and distribution center; enforcement based on what is available for sale is sufficient to enforce this rule. The cost involved with maintaining records for five years would be $39,000 for a single site. Depending on the distribution system, this could be quadrupled when records for the entire distribution chain are considered. Another commenter states that many small paint manufacturers and distributors who are struggling to comply with the OSHA Hazard Communication Standard, SARA, and other Federal and State laws may not have the personnel or capability of complying with recordkeeping requirements.

RESPONSE: Amendments to the recordkeeping requirements are proposed elsewhere in this issue of the New Jersey Register. These amendments will simplify the recordkeeping and reduce the cost of compliance. However, records are an important enforcement tool and will be retained in the rule. The Department has considered the information and suggestions offered by various commenters, and in consultation with its enforcement staff has developed recordkeeping requirements that fulfill enforcement needs, yet place less of a burden on industry than the present requirements. Factors such as cost of maintaining records and information needed for enforcement were considered when determining what changes to make to the recordkeeping requirements.

COMMENT: The recordkeeping requirements under N.J.A.C. 7:27-23.6 serve no purpose in improving air quality and are unnecessary considering current company records on invoices, shipping destinations and batch numbers on all products. These requirements are an unreasonable burden and should be deleted.

RESPONSE: Amendments to the recordkeeping requirements are proposed elsewhere in this issue of the New Jersey Register. Records are an enforcement tool, and the Department has attempted to reduce the burden of keeping records while maintaining their function as an enforcement tool. Suggestions from commenters that support this goal have been considered in the development of the proposed amendments.

COMMENT: One commenter questioned why all the recordkeeping is necessary. The rule does not say what is to be done with the records, how long they should be maintained, or who has the right to inspect them. It is unnecessary, redundant, and will impose an unreasonable burden on manufacturers and should be eliminated. The recordkeeping requirements will engender falsification of records and lead to chaos and confusion.

RESPONSE: The Department has the right to request to see records that pertain to enforcement of this rule. The rule does state what is to be done with the records, how long they should be maintained, and who has the right to inspect them. N.J.A.C. 7:27-23.6(d) states "All records and documentation shall be maintained for not less than five years, and shall, upon the request of the Department, be available for review."

However, the actual records to be kept are being proposed for amendment to reduce any burden on the affected industry. The proposal appears elsewhere in this issue of the New Jersey Register.

COMMENT: A separate document for recordkeeping should not be required. The packing list sent with each shipment, in conjunction with the VOS labeling on the container, should be sufficient. One commenter states his company's intention to place the VOS content on the order form and bill of lading in order to satisfy recordkeeping requirements. Another states that shipping documents could be used.

RESPONSE: A proposal which also appears in this issue of the New Jersey Register contains amendments to the recordkeeping requirements. The records to be maintained will be simplified by utilizing shipping documents that are already in use.

COMMENT: Does the recordkeeping requirement apply to all affected products, or only those actually manufactured in New Jersey?

RESPONSE: The recordkeeping requirements apply to all affected products sold in New Jersey. This rule regulates the sale, offering for sale, providing, use or manufacture for sale in the State of New Jersey of affected products. This provision is within the Department's authority and is a reasonable cost of doing business in the State.

COMMENT: The recordkeeping and inspection provisions are unclear in their applicability. These sections should be reviewed and the Department's intent clarified especially for out of State manufacturers who could not be inspected.

RESPONSE: The Department believes it is clear that the recordkeeping and inspection sections apply to products subject to this rule. The rule states what records are expected and who is to keep them and what rights of inspection the Department has.

Some changes to these two sections appear in amendments proposed elsewhere in this issue of the New Jersey Register. These amendments will simplify the recordkeeping to reduce the burden on industry without reducing effectiveness as an enforcement tool. Also, the section on inspections will deal separately with manufacturing facilities, and distributors and retailers.

N.J.A.C. 7:27-23.7 Inspections

COMMENT: One commenter questions the need for inspections under N.J.A.C. 7:27-23.7 and states inspection of equipment and physical structures on site cannot possibly be used as a measure of compliance. Photographing or sketching components used in production is inappropriate and for facilities located outside of New Jersey jurisdiction is a question. There is no need to enter a facility for sampling in any case. True samples are found on retailer shelves and that is where sampling should be done.

RESPONSE: Pursuant to both the Department's enabling legislation at N.J.S.A. 13:1D-9(d) and the Air Pollution Control Act (1954) at N.J.S.A. 26:2C-9(d) and 9.1, the Department has the right to enter any facility except private residences, to ascertain compliance or noncompliance with any code, rules, and regulations of the Department. The Department has the legal authority under these provisions to conduct unannounced inspections to the extent necessary to determine compliance or noncompliance. There may be circumstances which require the inspection of equipment and physical structures. A statement of the right to inspect does not mean the Department will exercise that right in all circumstances.

Sampling at the manufacturing facility may be needed. There is no guarantee that a product leaving a manufacturing facility will be the same when it reaches the retailer. An independent means of checking, such as samples taken at the facility, would then prove useful.

COMMENT: The paragraph on inspections should be rewritten in consultation with the affected industry. The Department has no jurisdiction outside of New Jersey to inspect records, sample or interview employees on site. Does this requirement apply to retail outlets?

RESPONSE: The section on inspections is being proposed for change in amendments that appear elsewhere in this issue of the New Jersey Register. The changes will clarify what is expected of manufacturers, distributors and retailers. The right to inspect does apply to retail outlets, among others, and all inspections will be performed in accordance with the law.

COMMENT: N.J.A.C. 7:27-23.7 refers to photographing or sketching of the site, building or equipment. The rule addresses VOS content of the product produced and the package. This clause is overbroad and arbitrary, as these requirements are useless to determine compliance with the VOS content limitations.

RESPONSE: The rule is simply setting out the Department's rights of inspection in all cases. If a particular right of inspection is not appropriate in a given situation, the Department will not choose to exercise that right.

COMMENT: N.J.A.C. 7:27-23.7 seems to indicate a requirement for laboratory and testing facilities to verify VOS content. The Department should not expect this at each retail outlet and distribution center where coatings are sold or stored. This section should be clarified if it refers to sampling to show what is expected from manufacturing sites, distributors and retailers.

RESPONSE: N.J.A.C. 7:27-23.7(b) has been proposed for amendment. In this amendment, this provision is divided into two parts; one describing what is required of manufacturing facilities, and the other describing what is required of distributors, retailers, and commercial painting businesses.

COMMENT: If the Department wishes to sample product, a full container of the item tested should be purchased and compliance determined at an independent or State-controlled laboratory as is done in California.

RESPONSE: The Department will be determining compliance by testing samples in its own laboratory.

Full text of the adoption follows (additions to the proposal indicated in bold face with asterisks ***thus*** deletions from the proposal indicated in brackets with asterisks *[thus]*).

7:27-23.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Air freshener" means any product available to a direct consumer which is marketed for the purpose of masking odors, providing a scent, or deodorizing, including, but not limited to, sprays, wicks, powders, and crystals. This does not include products for use on the human body.

"All others" means any coating which does not meet any other architectural coating definition.

. . .

"Flat architectural coating" means any coating which registers a gloss of 15 or less on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, or which is labeled as a flat coating.

"High heat resistant coating" means any coating formulated specifically for use in high temperature applications. These coatings are designed to withstand temperatures in excess of 400 degrees Fahrenheit.

. . .

"Opaque stain" means any stain not classified as a semitransparent stain.

. . .

"Quick-dry primer, sealer, and undercoater" means any primer, sealer or undercoater which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; seal fire, smoke, or water damage; block stains; or condition porous surfaces; and which dries to touch within one-half hour and can be recoated in two hours, as determined by ASTM-D-1640, or other method approved by the Department based on a study of comparability data.

. . .

"Semitransparent stain" means any coating which is formulated to change the color of a surface but not conceal or change the texture of the surface.

. . .

"Waterproofing sealer" means any coating formulated for the sole purpose of protecting porous substrates by preventing the penetration of water.

. . .

7:27-23.3 Architectural coatings

(a) Effective January 1, 1990 for Group I coatings and effective February 28, 1990 for Group II coatings, no person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (e) below.

(b) (No change.)

(c) The provisions of (a) and (b) above shall not apply to architectural coatings sold in:

1. New Jersey for shipment and use outside of the State. Documentation indicating the final destination of coating shipments shall be made available to representatives of the Department upon request.

2. Containers with a capacity of less than one quart (0.95 liter).

(d) (No change.)

(e) Table 1 contains the VOS content limits for architectural coatings:

TABLE 1
VOS CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type Of Architectural Coating	Maximum Allowable VOS Content Per Volume Of Coating Excluding Water	
	Pounds Per Gallon	Kilograms Per Liter
Group I		
Bituminous pavement sealer	0.8	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40
Industrial maintenance primer or topcoat	3.8	0.45
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
Non-flat architectural coating	3.2	0.38
Primer, sealer, and undercoater	2.9	0.35
Roof coating	2.5	0.30
Swimming pool coating	5.0	0.60
Traffic coating	2.1	0.25
Waterproof mastic coating	2.5	0.30
Wood preservative coating	4.6	0.55
Group II		
Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	4.5	0.55
opaque	2.9	0.35
Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All others	2.1	*[0.65]**0.25*

7:27-23.4 Air fresheners

(a) Effective February 28, 1990, no person shall sell, offer for sale, hold for sale, use, or manufacture for sale within New Jersey any air freshener which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(b) (No change.)

7:27-23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.2, the following shall apply:

1. (No change.)

2. The label or a sticker affixed to the label shall carry the following statement:

"This product contains a maximum of x pounds of VOS per gallon of coating."

i. Where x is the maximum pounds of VOS in a gallon of the architectural coating as produced by that manufacturer, excluding water and after any recommended thinning.

(b) (No change.)

(c) For labeling purposes only, terms other than VOS may be used provided that the volatile organic content level cited on the label is an accurate reflection of VOS content as defined in this subchapter.

(d) The provisions of (a) and (b) above shall not apply to any consumer product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq., provided an

application for any registration amendment necessary for compliance with this subchapter is filed with EPA prior to the product's compliance date as established by N.J.A.C. 7:27-23.3(a). A copy of this application shall be simultaneously submitted to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN027, Trenton, New Jersey 08625. Those products for which an application for an amended registration has been submitted in a timely manner are exempt until such time as the amendment request has been approved by EPA. Within 30 days of receipt of notice of EPA action on an amendment request, a copy of that notice will be supplied to the Assistant Director, Enforcement Element, at the address specified above.

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Catastrophic Illness in Children Relief Fund Program

Adopted New Rules: N.J.A.C. 8:18

Proposed: July 3, 1989 at 21 N.J.R. 1781(a).

Adopted: October 12, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Catastrophic Illness in Children Relief Fund Commission).

Filed: October 16, 1989 as R.1989 d.557, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2-148 et seq.

Effective Date: November 6, 1989.

Expiration Date: November 6, 1994.

Summary of Public Comment and Agency Responses:

The proposed new rules for the Catastrophic Illness in Children Relief Fund Program were published in the New Jersey Register on July 3, 1989 at N.J.R. 1781(a). A public hearing concerning the proposed rule was held on July 18, 1989 at the State House Annex in Trenton, New Jersey. Seven members of the public presented comment at the hearing. The Department and the Commission received written comments from 15 commenters during the public comment period ending August 2, 1989. In responding to the comments received, the Department and the Commission have evaluated the merits of the suggested changes and will include appropriate revisions in the adopted new rules.

The Department and the Commission wish to acknowledge and express appreciation to the following for appearing at the public hearing: Senator Donald DiFrancesco; Dr. Milton Prystowsky; Gail Levinson for the Mental Health Association; Dr. Walter Duryea; Stacee Springer for the Valerie Fund Children's Center of Newark Beth Israel Medical Center; Edna Burton for the Division of Developmental Disabilities; Martin Borell, Parent and Employer.

The Department and the Commission also wish to thank the following persons who commented in support for the relief which this program will offer to families who are not fully covered by other State or Federal programs of insurance contracts: Mercer County Special Child Health Services Case Management Unit; the Ocean County Board of Social Services; Health Officer, Township of South Brunswick; the Union County Labor Council, AFL-CIO.

Additional comments received addressed several aspects of the proposed rules and included statements submitted by the following: Special Child Health Services Case Management Units of Burlington, Camden and Passaic Counties; the Ocean County Health Department; the Warren County Welfare Board; the Passaic County Board of Social Services; Hunterdon Pediatric Associates; the North Hudson Community Action Corporation; the Association for Retarded Citizens in North Brunswick; and the Board of Chosen Freeholders, Burlington County. Comments were grouped by subsection of the rule. The comments and the responses by the Department and the Commission follow.

COMMENT: The definition of "child" in N.J.A.C. 8:18-1.2 should include a person 18 years of age.

RESPONSE: The Department and the Commission acknowledge the concerns of families in need of financial assistance for a family member 18 years of age; however, the age of eligibility is defined by statute (P.L. 1987, C. 370) and it is therefore not within the authority of the Department or the Commission to change. Families in such circumstances are encouraged to explore eligibility of the family member for Supplemental Security Income program benefits.

COMMENT: In regard to the definition of "income" in N.J.A.C. 8:18-1.2, several comments were received and included suggestions that all investment property be considered as income both while being held and upon sale; resources which could be sold be considered for income determination; that income be adjusted to net income. It was asked if income included that of both the child and the parent(s) and if families would be required to apply for, and be denied, other State or Federal program benefits in order to be considered for eligibility.

RESPONSE: The comments submitted are acknowledged. The Department and the Commission do not find that change in the definition of "income" is required in consideration of the intent of the program which is to preserve the integrity of the family and to relieve the financial burdens upon the family of a child with a catastrophic illness or condition. The definition of income was developed after review of income definitions for several existing State programs to ensure that the Catastrophic Illness in Children Relief Fund would not generally become available to a family before other public benefits. This would include the resources of Charity Care Program within the Uncompensated Care Trust Fund. The program will not require families to apply for other State or Federal program benefits unless eligibility for a specific program is evident during the eligibility screening process. As the definition of "family" in this subsection includes the child and the parent(s) or legal guardian(s), the income of the family would include both that of the child and parent(s) or legal guardian(s).

COMMENT: Several comments were received relative to the initial application process within N.J.A.C. 8:18-1.4 and the county case manager responsibilities within N.J.A.C. 8:18-1.10. Support was noted for the concept of county based case managers as the source of service for families in the application process. Several Special Child Health Services County Case Management Units commented to the need for training in the areas of mental illness and substance abuse conditions for the county units. The need for funding for the county units was noted, as was the recommendation that the Commission work closely with the network of county units in developing procedures for eligibility determination.

RESPONSE: The definition of "county case manager" means the Special Child Health Services County Case Managers in each county. The program will build upon the expertise in services to children with special needs which this established case management system has demonstrated. It is the intent of the Commission and the Department to provide training and funding for the county units through a grant relationship through the Special Child Health Services Program. This intent is consistent with the language of the statute which states that the Commission shall establish a program in conjunction with the Special Child Health Services Program. The Commission acknowledges and accepts the recommendation to work with the network of county units through the Special Child Health Services Program in developing the eligibility form and processes.

COMMENT: Several comments were received relative to the State Office and Commission review process within N.J.A.C. 8:18-1.5, and included the following: families should not have to wait long periods of time for review of applications because vendors of services might refuse to continue services; responsibility for follow-up to families needs to be determined for communication of eligibility determination; dissemination of information about the availability of the program is needed; a batch review process for applications would not permit evaluation of applications on absolute need; a batch process could lead to influence on the number of applications in a batch at the county level.

RESPONSE: The Department and the Commission acknowledge the comments and concerns expressed and accept the comment that families should not have to wait long periods of time for determination of eligibility and will establish administrative procedures for the processing of applications for initial and final determinations of eligibility in a timely manner. As eligible expenses are those for which services have been previously provided, the Fund is not available at this time to serve as a payment mechanism for current service needs. The Commission accepts the recommendation from several sources that a wide distribution of information relative to the availability of the program be planned. The Commission and the Department concur with the comment that influence upon a batch of applications should be avoided, and to that end, has amended the subsection on the timing period for measuring expenses and income, N.J.A.C. 8:18-1.13.

COMMENT: One comment was received in which concern was expressed that the "annual cap" within N.J.A.C. 8:18-1.7 might not provide significant relief for those families without insurance and asked if special consideration could be given to individual applications. It was also recommended that reimbursement should be at the Medicaid rate to spread the $25,000 cap.

RESPONSE: The Department and the Commission acknowledge the concern expressed. Families may reapply annually to the Fund and a provision is made for special cases in N.J.A.C. 8:18-1.18. The $25,000 cap per eligible child has been established based upon the availability of funds and the anticipated volume of eligible families. The Commission will consider the reasonableness of charges in determining reimbursement; however, it is the purpose of the Fund to provide financial assistance for expenses previously incurred and over which families have little influence.

COMMENT: One comment was received which questioned the consideration of assets only in relation to the use of a sliding payment schedule within N.J.A.C. 8:18-1.8, and suggested assets also be used for determination of eligibility.

RESPONSE: The basic requirements for income eligibility are established in statute, and are not within the authority of the Department or Commission to change.

COMMENT: Several comments were received which suggested that changes be made in the timing period for measuring expenses and income within N.J.A.C. 8:18-1.13. One commenter asked if outstanding medical debts could be carried over and credited in calculating subsequent years' expenses. It was suggested that the use of a variable 12(consecutive) month period for calculating expenses and income would require extensive time and be very complex to administer for the county case managers.

RESPONSE: The Department and the Commission accept the recommendation that a definite one year period of time be established and provision will be made for supplemental statements of expense and income to be requested by the State Office. The calendar year will be identified as the 12(consecutive) month period for measuring expenses and income in order to relieve the administrative burden upon county case managers and enable prompt processing of applications. At the same time, the original intent of the proposal of allowing consideration of a family's most current financial situation is retained through an additional new provision whereby such data can be requested and reviewed by the State Office. Outstanding medical debts from a prior year will not be credited in calculating medical expenses for initial eligibility.

COMMENT: Questions submitted relative to eligible health services in N.J.A.C. 8:18-1.14 asked if the following would be considered eligible: non-traditional services related to the care of the child; services provided for a child who had expired; services for a child who was under 18 at the time of the service but who is 18 or over at the time of application; respite services; mental health services; drug and alcohol rehabilitation services; transportation related to the care of the child; counseling services for family members related to the care of the child; services needed prior to transplantation surgery; in-home evaluation and assistance. One comment was received which questioned services provided by a chiropractor within the context of pediatric rehabilitative services.

RESPONSE: The above services will be considered for eligibility determination if the child was under 18 at the time the service was provided. The Commission will refer any service for which there is a question of medical necessity or medical authorization for a medical review. Physician prescription is not required for all services nor is prior physician authorization. The Commission will amend the subsection to delete the word "facilities" in (a)7 to make this subsection consistent with the previous subsections which define eligible services in terms of "care" and "services" rather than in terms of "facilities." It also should eliminate confusion and uncertainty and make clear that respite, hospice and other kinds of long-term care rendered in the home or other non-facilities are covered.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

CHAPTER 18
CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

SUBCHAPTER 1. CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

8:18-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish criteria for eligibility and establish a standard methodology for determining the amount of financial assistance to be allocated for services of a child's health providers and vendors for families in the State of New Jersey whose child suffers from a catastrophic illness.

(b) The procedures established shall be followed by the Catastrophic Illness in Children Relief Fund Commission.

8:18-1.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means P.L. 1987, Chapter 370, N.J.S.A. 26:2-148 et seq. which establishes the Catastrophic Illness in Children Relief Fund.

"Batch" means a grouping of applications for the purpose of applying the provisions of N.J.A.C. 8:18-1.6, 1.7 and 1.8.

"Catastrophic Fund" or "Fund" means the Catastrophic Illness in Children Relief Fund.

"Catastrophic Illness" means any illness or condition for which the incurred medical expenses not covered by any other State or Federal program or any other insurance contract exceed 30 percent of the income of a family whose income is $100,000 or less per year or 40 percent of the income of a family whose income is over $100,000 per year.

"Child" means a person under 18 years of age.

"Commission" means to the nine member Catastrophic Illness in Children Relief Fund Commission created by the Act and appointed by the Governor to administer the Fund. The Commission, chaired by the Commissioner of Health, is "in but not of" the Department of Health.

"County case manager" means to the Special Child Health Case Manager, located in each county in New Jersey, who has responsibility for conducting the initial screen (that is, determining if child's medical expenses exceed thirty percent of income of families with incomes of $100,000 or less or 40 percent of incomes over $100,000).

"Days" means calendar days.

"Deductible" means that dollar amount represented by 30 percent or 40 percent of family income. The standard practice of the Fund shall be to consider disbursements for a child's out-of-pocket medical expenses only after the deductible, which will vary by each family based on family income, is met.

"Executive director" means the professional employed by the Commission, in accordance with NJ Department of Personnel's procedures, to administer the Fund on a day-to-day basis on behalf of the Commission.

"Family" means a child and the child's parent, parents, or legal guardian, as the case may be, who is legally responsible for the child's medical expenses.

"Income" means the following:

1. Wages before deductions;
2. Public Assistance;
3. Social Security Benefits;
4. Supplemental Security Income;
5. Unemployment and Workman's Compensation;
6. Strike Benefits from Union Funds;
7. Veteran's Benefits;
8. Training Stipends;
9. Alimony;
10. Child Support;
11. Military Family Allotment;
12. Regular Support from Absent Family Member;
13. Pension Payments;
14. Insurance or Annuity Payments;
15. Income from Estates and Trusts;
16. Dividends;

17. Interest Income;
18. Rental Income;
19. Royalties; and
20. Other sources of income not mentioned above; however,
21. Income does not include the following money receipts: withdrawals from a bank; sale of property, house or car; tax refunds; gifts; one-time insurance payments; or compensation from injury, unless the injury directly relates to a child's condition which is the basis for an application being made to the Fund. Also disregarded is non-cash income.

"State Office of Catastrophic Illness in Children Relief Fund (State Office)" means the Office of the Executive Director of the Fund, which has responsibility for administering the Fund on a day-to-day basis on behalf of the Commission.

"Threshold" means the point at which a child's out-of-pocket medical expenses exceed the 30 percent of income for a family whose income is $100,000 or less or 40 percent of income for a family whose income is more than $100,000. After a child's medical expenses reach this threshold, the child has passed the initial screen for eligibility for assistance from the Fund.

8:18-1.3 General requirements

(a) Pursuant to the Act, the Fund will provide assistance to families having a child with a catastrophic illness. A child shall have passed the initial screen for eligibility for the Fund's assistance when a child's incurred medical expenses (not covered by private insurance or other public programs) for a year exceed the amount represented by either 30 percent or 40 percent of family's income.

1. Thirty percent shall be the screen used for families whose income is $100,000 or less.

2. Forty percent shall be the screen used for families whose income is more than $100,000.

(b) Though the child shall be referred to as being enrolled or eligible at the point in the application process when child has passed the initial screen, actual Fund disbursements on behalf of a child shall be limited by the monies available in the Fund and shall be guided by the policies and procedures outlined in this subchapter.

(c) To be eligible for assistance, a child must be a resident of the State of New Jersey. Resident means a person legally domiciled in New Jersey for a period of six months immediately preceding the initial date of application for assistance to the Fund.

1. A child's state of residence is that of the parent(s) or legal guardian.

2. Establishing proof of legal domicile within New Jersey is a responsibility of the parent or legal guardian of a child.

3. Absence from New Jersey for a period of 12 months or more is prima facie evidence of abandonment of domicile.

4. Seasonal residents in New Jersey are excluded from eligibility. Migrant workers who can document a previous history of work in New Jersey are eligible for consideration.

8:18-1.4 Initial application process

(a) Applications may be submitted on a year-round basis to the county case managers. The name, address, and phone number for county case managers shall be available from the State Office. The county case managers shall conduct the initial screen and forward completed written applications on forms provided by the State Office for those children who qualify to the State Office, along with the relevant documentation of expenses and income.

8:18-1.5 State Office and Commission review process

(a) Upon receipt of the completed applications from the county case managers, the State Office shall consider the reasonableness of providers' and vendors' charges. Out-of-State providers shall not be reimbursed at a rate greater than that of in-State providers.

(b) Providers shall be able to demonstrate licensure or certification by appropriate State or Federal agencies, if requested by State Office.

(c) Prior to the Commission's batched review of applications, the State Office shall prepare a disbursement schedule for each application in accordance with N.J.A.C. 8:18-1.6, 1.7 and 1.8.

(d) In a cycle of batch reviews, the Commission shall review the applications and the State Office's disbursement schedule for each application based on the deductible, annual cap, and the sliding payment schedule and make a decision on the Fund's level of assistance for each case. The calendar for the batch reviews shall be made available to the public by the State Office in advance of each year.

8:18-1.6 Deductible

Incurred, out-of-pocket medical expenses below the 30 percent or 40 percent threshold shall be considered the family's deductible and shall not be reimbursed by the Fund. Expenses in excess of the deductible shall be considered for payment by the Fund (see examples in Appendix I.).

8:18-1.7 Annual cap

(a) The amount of Fund's disbursements on behalf of a child shall be capped at $25,000 per year.

8:18-1.8 Sliding payment schedule

If adequate funds do not exist in the Fund at the point in time when a particular batch is being considered by the Commission to pay all applicants the amount of their expenses above their deductible and below the annual cap, a sliding payment schedule shall be used in an effort to distribute the available monies to applicants in an equitable way that considers a family's income, assets and other factors which impact the ability to pay for care.

8:18-1.9 Allocation distribution plan

Because the Fund's actual level of assistance to families, as determined by the Commission, shall in most, if not all, cases be less than the child's medical expenses, the Commission shall determine how the Fund's available monies shall be distributed among eligible providers and vendors. Input from the family shall be sought in the analysis preceding this determination, with guidance from the State Office. A parent or legal guardian of child shall be required to sign a payment distribution plan, prior to release of monies on behalf of the child.

8:18-1.10 County case manager responsibilities

(a) The county case manager shall:

1. Conduct the initial screen to determine whether a child's medical expenses exceed 30 percent of income of families with incomes of less than $100,000 or 40 percent of income over $100,000; and

2. Make referrals and assist in the application process for other programs and benefits (for example, Medicaid, Hospital Charity Care, and other programs), where applicable.

8:18-1.11 State Office responsibilities

(a) The State Office shall:

1. Administer the Fund on a day-to-day basis on behalf of the Commission;

2. Monitor providers eligibility (that is, certification or other credentials);

3. Consider the reasonableness of providers and vendor charges;

4. Prepare applications for review and consideration of the Commission; and

5. Oversee payments to providers, vendors and, in some cases, to families.

8:18-1.12 Commission responsibilities

(a) The Catastrophic Illness in Children Relief Fund Commission shall be responsible to:

1. Develop policies and procedures for operation of the Fund; and

2. Meet to review and make decisions on applications of families for financial assistance in regularly scheduled cycles.

8:18-1.13 Time period for measuring expenses and income

In screening a child/family for eligibility for the Fund, expenses and income shall be measured by *[any]* ***the*** 12 (consecutive) month period which ends the last day of the month ***of December*** preceding a family's initial application to the Fund. However, for the Fund's first year of operation the time period shall be expanded to include *[any]* ***the*** 12 (consecutive) month period which begins on *[or after]* January 1988, the month in which the Act became law. ***In addition, a supplemental statement of current income and expenses may be submitted at the request of the State Office.*** Applications shall be accepted any time throughout the year.

8:18-1.14 Eligible health services

(a) Categories of incurred health and health-related expenses eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold include, but are not limited*[,]* to *,* the following:

1. Primary care (preventive care), including immunizations, physician-authorized ancillaries (labs, x-rays);

2. Specialized pediatric ambulatory care, including physician-authorized rehabilitative therapies (for example, speech, occupational, and physical), physician-authorized mental health care, dental care, physician-authorized eye care, chiropractic care);

3. Care in an acute hospital in New Jersey (treatment for acute and chronic conditions);

4. Care in acute hospitals in other states (treatment for acute and chronic conditions as well as highly specialized care such as organ transplants);

5. Physicians in all settings (for example, office, hospital);

6. Care in specialty hospitals (for example, rehabilitative psychiatric);

7. Long term care *[facilities]* (respite care, hospice care, residential care, or other care);

8. Home health care (physician-authorized home health aide, physician-authorized public health nurse, physician-authorized private duty nurse or other care);

9. Pharmaceuticals (physician-authorized over-the-counter and prescription drugs);

10. Disposable medical supplies (phyisican-authorized over-the-counter and prescribed supplies);

11. Durable medical equipment (for example, physician-authorized ventilators, prostheses);

12. Family transportation related to medical condition; and

13. The portion of the health insurance premium for the child's coverage paid by family. This includes supplemental and dependent coverage.

8:18-1.15 Ineligible health services

(a) Categories of health and health-related expenses which are not eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold shall include, but are not limited to, the following:

1. Special education required as result of medical condition;

2. Elective cosmetic surgery;

3. Experimental medical treatment/experimental drugs which are not recognized by Federal and State agencies (for example, the Food and Drug Administration). Applications involving experimental treatment may be forwarded by the Commission to an expert for review for possible coverage under N.J.A.C. 8:18-1.14, Eligible health services.

8:18-1.16 Administration of payments

(a) The State Office shall oversee processing of payments from the Fund. Though in general payments shall be made directly to providers and vendors, consideration shall be given to making payments directly to families in special cases (that is, in the instance in which a family has already paid out-of-pocket for medical expenses in an amount which exceeds its 30 or 40 percent of income threshold).

(b) Items in N.J.A.C. 8:18-1.4, Eligible health services, shall be considered for payments.

(c) Insurance premiums shall be considered for payment.

8:18-1.17 Appeals process

(a) The following applies to first level appeals:

1. An applicant who disputes a determination made by the county case manager may appeal to the State Officee by filing a written appeal addressed to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Program
363 West State Street
Trenton, New Jersey 08625
CN 364
Attn: Executive Director

2. The appeal shall comply with the following requirements:

i. The appeal shall be in writing:

ii. The written appeal must include all reasons for the appeal and any documentation or proof in support thereof; and

iii. Appeals must be received by the State Office no later than 21 days from the date of notice of the determination made by the county case manager.

3. Upon receipt of the appeal, the State Office shall:

i. Acknowledge receipt of the appeal in writing to the applicant within 14 days;

ii. Conduct such review and analysis as is necessary to determine if there is a basis for the claim; and

iii. Issue a written determination to the applicant within 90 days of original receipt of the appeal.

(b) The following applies to second level appeals:

1. Upon receipt of a determination by the State Office, an applicant who disputes that determination may appeal to the Catastrophic Illness in Children Relief Fund Commission by filing a written appeal to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Commission
John Fitch Plaza
CN 360
Trenton, New Jersey 08626-0360
Attn: State Commissioner of Health

2. Appeals must be received at the above address no later than 21 days from the date of notice of the determination made by the State Office.

3. The written appeal shall include all reasons and grounds for disputing the determination made by the State Office and all proof and documentation in support of the appeal.

4. The Commission shall conduct such review and analysis as is necessary to reach a decision on the appeal. At its discretion, the Commission may direct a conference to be convened with the applicant, or may refer the matter to the Office of Administrative law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

5. Except for appeals referred to the Office of Administrative Law, the Commission shall render a decision on the appeal within 90 days from the date of original receipt of the appeal. Appeals referred to the Office of Administrative Law shall be decided by the Commission within 45 days from the date of filing of the Initial Decision of the Administrative Law Judge, or at such later date as permitted by law.

6. A decision made by the Commission shall be final. It may be appealed to the Superior Court of New Jersey as permitted by court rules.

(c) Unless otherwise specifically ordered by the Commission, an applicant may not receive benefits from the Catastrophic Illness in Children Relief Fund while an appeal is pending at any level.

8:18-1.18 Special cases

(a) Special cases shall be referred to the Commission for its review and consideration. Special cases shall include, but are not limited to, the following:

1. In special cases in which a family has more than one child, with a catastrophic illness (as defined by expenses in excess of the 30 or 40 percent threshold for each child), consideration shall be given to waiving the standard deductible as outlined in N.J.A.C. 8:18-1.3 for the other child/children given that the family would have already met the deductible for the first child.

2. The Commission shall consider writing a nonbinding letter of conditional acceptance for assistance in the next year, with the intent that such a letter would offer some measure of assurance to the child's health provider/vendor, and thus facilitate the child's access to needed services, in special hardship cases in which:

i. A child is eligible for the Fund in one year; and

ii. Is projected to be eligible for the Fund in the next year; and

iii. The family's ability to pay for the child's medical care in the next year is questionable; and

iv. This inability to pay will jeopardize the child's access to needed care.

3. For special hardship cases that come before the Commission during a batch cycle, after the standard disbursement guidelines have been applied to each case in the batch and sufficient monies remain

in the Fund, consideration shall be given to waiving the standard disbursement guidelines (that is, the deductible and the cap as outlined in N.J.A.C. 8:18-1.6 and 1.7).

8:18-1.19 Confidentiality of information

Information received pursuant to the duties required by the Act shall not be disclosed publicly in such a manner as to identify individuals unless special circumstances require such disclosure and the proper notice is served and parent or legal guardian's consent is given, as may be necessary for pending legal proceedings.

APPENDIX I
EXAMPLES OF CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

The examples below illustrate the extent which Fund would assist two families with different income levels (that is, $30,000 and $80,000) under three graduated levels of eligible medical expenses (that is, $15,000, $30,000 and $60,000).*

ELIGIBLE MEDICAL EXPENSES: $15,000

FAMILY #1 (with income of $30,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$15,000
Family Income:	$30,000
Front-end Deductible (30% of Family Income):	$ 9,000
Amount of Fund's Financial Assistance to Family:†	$ 6,000
Total Amount for which Family remains responsible:	$ 9,000
FAMILY #2 (with income of $80,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$15,000
Family Income:	$80,000
Front-end Deductible (30% of Family Income):	$24,000
Amount of Fund's Financial Assistance to Family:†	$ 0
Total Amount for which Family remains responsible:	$15,000

ELIGIBLE MEDICAL EXPENSES: $30,000

FAMILY #1 (with income of $30,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$30,000
Family Income:	$30,000
Front-end Deductible (30% of Family Income):	$ 9,000
Amount of Fund's Financial Assistance to Family:†	$21,000
Total Amount for which Family remains responsible:	$ 9,000
FAMILY #2 (with income of $80,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$30,000
Family Income:	$80,000
Front-end Deductible (30% of Family Income):	$24,000
Amount of Fund's Financial Assistance to Family:†	$ 6,000
Total Amount for which Family remains responsible:	$24,000

ELIGIBLE MEDICAL EXPENSES: $60,000

FAMILY #1 (with income of $30,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$60,000
Family Income:	$30,000
Front-end Deductible (30% of Family Income):	$ 9,000
Amount of Fund's Financial Assistance to Family:†	$25,000
Total Amount for which Family remains responsible:	$35,000
FAMILY #2 (with income of $80,000)	
Amount of Eligible Medical Expenses Not Covered by Insurance:	$60,000
Family Income:	$80,000
Front-end Deductible (30% of Family Income):	$24,000
Amount of Fund's Financial Assistance to Family:†	$25,000
Total Amount for which Family remains responsible:	$35,000

† Assuming: an annual $25,000 cap; adequate monies available in fund obviating need for additional restrictions and cost-sharing; all expenses are reasonable and customary; and none of the cases are in the "special" category.

(a)

HEALTH FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities Cost Accounting and Rate Evaluation Guidelines

Adopted Amendments: N.J.A.C. 8:31C-1.2, 1.3, 1.4, 1.6, 1.12 and 1.17

Proposed: August 21, 1989 at 21 N.J.R. 2454(a).
Adopted: October 12, 1989 by Thomas Burke, Ph.D., M.P.H., Acting Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: October 16, 1989 as R.1989 d.558, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq. specifically 26:2H-18(c).

Effective Date: November 6, 1989.
Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

Commenters: The Pennington Group, Straight and Narrow, Center for Addictive Illnesses.

COMMENTS: Favorable comments were submitted with regard to the extension of one month submitting of cost reports, as well as the revising of the occupancy percentage for adolescent facilities. Also, regarding N.J.A.C. 8:31C-1.3(b), strict adherence to the deadline was emphasized, although the prerogative of the Department of Health to impose a non-recoverable penalty for late submission was supported.

RESPONSE: The Department of Health concurs with the above comments.

Full text of the adoption follows:

8:31C-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Base Year" is the year from which historical cost data are utilized for the prospective reimbursement in the 'Rate Year' or reimbursement period. This Base Year is two years prior to the Rate Year.

. . .

"Effective Rate Period" represents the calendar year beginning January 1st through December 31.

. . .

"Rate Year" is the year of reimbursement and is known as the 'Reimbursement Period' or Effective Rate Period.

. . .

8:31C-1.3 Reporting period: cost data

(a) RATFs shall submit their base year data to the Department of Health no later than April 30th of the following year. The Department of Health shall establish the Screened Rate 90 days prior to the beginning of the effective rate period. These rates will not be subject to routine retroactive adjustments except for matters specified in the rule.

(b) Residential Alcoholism Treatment Facilities that fail to submit their actual cost reports by April 30, in a condition that would render them suitable for entry into the data base, shall forfeit their right to proceed under the screened methodology for determining a reasonable reimbursement rate. Where cost studies are received beyond the 120 day filing requirement, prospective per diem rates will be established no later than 90 days after the effective date of the reimbursement rate. The revised rate will be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in this chapter. The Director of Health Facilities Rate Setting may apply a non-recoverable 20 percent reduction to the RATF's latest approved per diem rate. This reduction will remain in effect until the facility has submitted an acceptable cost report to the Department of Health. This non-recoverable reduction will not be subject to an appeal under N.J.A.C. 8:31C-1.16.

(c)-(d) (No change.)

(e) The reduction rates indicated in (b) above will be applied to the appropriate rate year.

8:31C-1.4 Rate components

(a)-(c) (No change.)

(d) All lease costs incurred as a result of related party transactions, will be excluded for reimbursement purposes. A "related party" is defined as:

1. A corporation, partnership, trust or other business entity:

i. Which has an equity interest or 10 percent or more of the facility;

ii. Which has an equity interest of 10 percent or more in any business entity which is related by the definition in (d)1i above; or

iii. In which any party, who is a related party, by any other definition (in (d)1i or ii above or in (d)2 below) has an equity interest of 10 percent or more and which has a significant business relationship with the facility.

2. An individual:

i. Who has a beneficial interest of 10 percent or more in the net worth of the facility; or

ii. Who has a beneficial interest of 10 percent or more in an equity related by (d)1ii or iii above; or

iii. Who is a relative of an individual who is covered by the definition in (d)2i or ii above; or

iv. Whose beneficial interest is cumulative, if it relates to spouse, parent or children; or

v. One party who has the ability to influence the management or operating policies of the other party to the extent that one of the transacting parties is not fully pursuing its own separate interest.

(1) This includes sole proprietorships, partnerships, non-profit entities and corporations or any individual or group with a vested interest in any entity associated with the operation of an RATF.

(2) In order to ascertain if any potential conflict may result, all persons in a decision-making capacity such as administrator, chief financial officer, chief executive officer, department head or board member must certify in writing if they have a contractual, financial, fiduciary or advisory relationship with any entity associated with the operation of the RATF.

(e) In related lease transactions, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include in its costs the property expenses of ownership of the facility. These expenses include only depreciation, interest, property taxes and property insurance for the building and/or equipment. Other expenses of the lessor such as accounting fees, utilities, travel and other direct or indirect overhead are non-allowable. The effect is to treat the facility as though it were owned by the provider. Other related party transactions will be screened for reasonableness.

(f) Related parties must disclose the nature of any contractual and/or financial relationship that they may have with any Residential Alcoholism Treatment Facility in the State of New Jersey.

8:31C-1.6 Target occupancy levels

(a)-(b) (No change.)

(c) Target occupancy for Residential Alcoholism Treatment Facilities with adolescent treatment beds will be established at the higher of the facility's actual occupancy or 90 percent of the Statewide average occupancy for those facilities approved for adolescent beds by the Department of Health.

8:31C-1.12 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services will be established as follows:

1. (No change.)

2. Total nursing costs for each RATF in the base period (per (b)1 above) will be accumulated and then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a Statewide basis.

3. (No change.)

(c) Reasonableness limits for counseling services will be established as follows:

1. (No change.)

2. Total counseling costs for each RATF in the base period (per (c)1 above) will be accumulated and then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a category basis (adult, adolescent).

3. (No change.)

8:31C-1.17 Special rate provision for rates effective July 1, 1988

(a)-(c) (No change.)

(d) For the rate period July 1, 1989 through December 31, 1990, reimbursement rates will be established based upon the greater of the Department of Health's screened rate effective July 1, 1988 increased by an economic factor or the screened rate effective January 1, 1990 through December 31, 1990. This rate will be retroactive July 1, 1989.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Home Health Agency Policy Manual

Adopted Amendments: N.J.A.C. 8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7

Proposed: August 21, 1989 at 21 N.J.R. 2455(a).

Adopted: October 13, 1989 by Thomas A. Burke, Ph.D., M.P.H., Acting Commissioner of the Department of Health (with approval of the Health Care Administration Board).

Filed: October 16, 1989 as R.1989 d.559, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: November 6, 1989.

Expiration Date: November 16, 1992.

Summary of Public Comments and Agency Responses:

Written comments were received from Kimberly Quality Care.

COMMENT: Kimberly Quality Care states that the definition of "coordination and standardization of care" proposed in N.J.A.C. 8:33L-1.2 relates to operational issues, and its inclusion exceeds the intent of certificate of need regulations. The definition could conflict with the Medicare Conditions of Participation or State licensure regulations for home health agencies.

RESPONSE: The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.), the enabling statute for health planning regulations in New Jersey, indicates that promotion of high quality health care is one of the main objectives of certificate of need regulation. The definition of "coordination and standardization of care" is proposed in order to address specific quality of care issues in home health service provision. It was developed with expert input from the Department's Home Health Advisory Committee, which included representatives from the home health industry and the Division of Health Facilities Evaluation. The term "coordination and standardization of care" is used in N.J.A.C. 8:33L solely in the context of a provision that requires certificate of need applicants for agencies covering extensive geographical areas to identify how they will go about assuring coordination and standardization of care throughout their service area (see N.J.A.C. 8:33L-2.1(d)). There is currently no definition of either coordination or standardization of care in the Medicare Conditions of Participation or State licensure regulations for home health agencies. The Department cannot accept Kimberly Quality Care's implied suggestion that the definition of "coordination and standardization of care" should be deleted.

COMMENT: Kimberly Quality Care objects to the proposed amendment in N.J.A.C. 8:33L-2.1(c), which limits an agency's service area to one county or the sub-areas of two contiguous counties. The commenter states that multi-county home health agencies provide an opportunity for cost-effective operations. Kimberly also questions whether N.J.A.C. 8:33L-2.1(d) would require an existing agency to receive certification of need approval to establish branch offices.

RESPONSE: N.J.A.C. 8:33L-2.1(c) only limits the service area of new home health agencies, which may have difficulty becoming established if they attempt to serve large, diverse areas during the fledgling phase of operation. The proposed amendment does not preclude existing, successful agencies from expanding their service areas into multiple counties where there is a need for additional home health agencies. In fact, New Jersey has a number of agencies that serve multi-county areas. With respect to the commenter's question about the certificate of need requirement for an existing agency proposing to establish a branch office, the writer may find clarification in N.J.A.C. 8:33L-2.1(b). The latter indicates that a certificate of need is required when the establishment of a new or expanded service area is proposed, or when any other change in an

existing agency's service area is planned. If an existing agency merely wishes to establish a branch office within its approved service area, a certificate of need would not be required.

COMMENT: Kimberly Quality Care questions the requirement in N.J.A.C. 8:33L-2.2 that home health agencies provide at least 5,000 skilled nursing visits per year. The commenter believes that this number may be unrealistic for a start-up agency. Kimberly also objects to N.J.A.C. 8:33L-2.2(b)3, which requires the provision of at least 2,500 nursing visits for agencies proposing to serve low income municipalities. The commenter believes this exception to the usual 5,000 visit requirement is discriminatory, because the need for home health services in low income areas may be greater than in other communities.

RESPONSE: The minimum visit volumes were determined with the input of the Department's Home Health Advisory Committee. The Committee reviewed the existing rules which require a minimum of 5,000 nursing visits per year, and did not deem that there was a reason to alter this current, minimum requirement for general home health agencies serving one or more counties. However, in the case of agencies approved to serve a smaller area, such as an underserved city, or a specific sub-population, such as patients who are HIV-infected, it was recognized that the visit volumes might be less than could be expected of a general home health agency serving a larger area. Because the Department wishes to encourage providers that propose to care for low income municipalities, a less onerous visit volume is required of these agencies. However, in the case of both general agencies and those serving low income municipalities, a minimum visit volume requirement is believed to be essential, in order to discourage the existence of "paper" agencies that do not adequately serve the areas for which they received certificate of need approval.

COMMENT: Kimberly Quality Care objects to the amendment in N.J.A.C. 8:33L-2.4(a)4 which indicates that the Department will make use of the most recent available data for determining which areas of the State have a home health access problem. The commenter questions the validity of these data and expresses the concern that there may be a two-year lag time until data are available to the Department. This data requirement could thus limit recognition of current problems in the provision of home health care.

RESPONSE: The Department's annual survey of home health agencies is conducted by the Center for Health Statistics, and it now includes components aimed at gathering data regarding agencies' current and past service provision. For example, the Center for Health Statistics has recently sent agencies a questionnaire with items pertaining to visit volumes and service utilization for 1988, as well as items concerning service provision for 1989. The latter information will be used in making certificate of need determinations for home health agencies in 1990.

COMMENT: Kimberly Quality Care recommends that a distinction be made between extended and intermittent "high-tech" services.

RESPONSE: Within the full context of N.J.A.C. 8:33L-2.4(a)4, a distinction between extended and intermittent "high-tech" services does not appear to be germane. The subparagraph at N.J.A.C. 8:33L-2.4(a)4iii merely identifies the absence of high-tech services provided by a licensed home health agency as an access problem. It is the Department's position that every service area should have access to high-tech services that are provided by at least one home health agency, since home health agencies must meet specific licensing standards aimed at assuring high quality care. In areas where there is no licensed home health agency offering high-tech care, the Department may then consider approving an additional agency to correct this access problem.

COMMENT: Kimberly Quality Care objects to the requirement in N.J.A.C. 8:33L-2.4(g)2 that agencies provide charity care in an amount that exceeds the average amount being provided by all other agencies serving the area. The commenter states that this is an inequitable requirement because it is more stringent for the new provider than for the established agency. This could make it difficult for the new agency to compete with existing providers.

RESPONSE: The subsection proposed in N.J.A.C. 8:33L-2.4(g) pertains only to agencies approved specifically to serve low income municipalities. As is explained in paragraph (g), this subsection allows for an exception to the standard access criteria used for determining health service need, as delineated in N.J.A.C. 8:33L-2.4(a)4. The purpose behind approving agencies through this exception is to promote access to care for medically indigent patients. It follows that such agencies should go beyond existing providers in serving the population with the greatest need in the service area. To say that a newly approved agency should offer less than the average amount of charity care provided by existing agencies could have the opposite effect of what the commenter describes: it could create an unfair advantage for the new provider.

COMMENT: Kimberly Quality Care objects to the proposed provision in N.J.A.C. 8:33L-2.4(h) that precludes agencies which are approved to serve a special sub-population from offering home health care to patients who are not members of the specified sub-population. The commenter states that this requirement impacts upon the financial viability of the specialty agency and fragments care for those patients who must be referred to other home health agencies for service. The needs of a special sub-population could change and cease to exist, while a new, different client base might arise. The specialty agency would be prevented from responding to the newly identified patient needs.

RESPONSE: The subsection proposed in N.J.A.C. 8:33L-2.4(h) allows for an exception to the standard access criteria used for determining health service need, as delineated in N.J.A.C. 8:33L-2.4(a)4. The purpose behind approving agencies through this exception is to promote access to specialized care for patients who are members of a particular sub-population, such as pediatric patients or patients who are HIV-infected. Because specialty agencies are expected to be staffed with professionals possessing expertise in care of the sub-population, it would be inappropriate for them to accept referrals or otherwise provide care to patients who are not members of the special sub-population. If a specialty agency proposed to change its mission so that it can treat the general home health patient population, the agency may apply for a certificate of need in accordance with the rules for general home health agencies (see N.J.A.C. 8:33L-2.4(a)4). Similarly, if a specialty agency identifies a new subpopulation it wishes to serve, it may apply for a certificate of need in accordance with the rules in N.J.A.C. 8:33L-2.4(h). With respect to specialty agencies' financial viability, the commenter should note N.J.A.C. 8:33L-2.4(h)2vi. The latter states that certificate of need applicants for agencies treating special sub-populations must submit verification that their projects will be financially feasible and that reimbursement is available for services to be rendered.

COMMENT: Kimberly Quality Care objects to proposed amendments in N.J.A.C. 8:33L-2.6 regarding transfer of ownership requirements for home health agencies. The commenter indicates that the transfer of "paper" agencies should be permitted and that potential new providers should not be subject to the costs associated with applying for a new certificate of need. The certificate of need process is lengthy and access to care will be limited while new operators complete this process to get approved.

RESPONSE: N.J.A.C. 8:33L-2.6 is in part intended to discourage individuals from obtaining a certificate of need unless they sincerely intend to operate the approved home health agency. "Paper" agencies deprive communities of the home health services they deserve and need. On the other hand, changes may occur in a service area, such that an agency approved at one point in time may cease providing care because the need for that agency diminishes. For example, there may be decreases in the population in certain age groups. When this occurs, it would not contribute to the orderly development of health care services to transfer the ownership of a defunct agency. The certificate of need process offers the most equitable treatment of all parties that want the opportunity to compete for approval of needed, new home health agencies.

COMMENT: Kimberly Quality Care objects to N.J.A.C. 8:33L-2.7, which specifies home health agencies' charity care requirements for medically indigent patients. The commenter states that the capability of an agency to provide charity care is directly related to its ability to obtain funding for such services. The Department of health should encourage funding sources that will subsidize charity care. Also, Kimberly questions whether an agency will be subject to license revocation if it accepts all charity cases that are referred to it, but is still unable to fulfull its charity care requirement.

RESPONSE: The definition of charity care and the three percent requirement were developed after careful deliberation by the Department's Home Health Advisory Committee. The three percent requirement is deemed to be a minimal amount. In view of the tremendous need for home health care, it should not be difficult for agencies to identify medically indigent patients who could benefit from charity care. The Department would be supportive of any licensed agency's efforts to obtain funding to cover charity care costs.

Full text of the adoption follows.

8:33L-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Charity care" means home visits that are provided by a home health agency to medically indigent patients either at no charge to the patient or at a reduced charge.

"Coordination and standardization of care" means the provision of home health services in accordance with patients' needs and with protocols established by a home health agency, so that all patients of the agency receive the following aspects of service in a standardized, consistent manner: screening for agency admission and discharge, case management, follow-up of health-related problems, and referrals to other agencies and service providers for care that can not be offered the home health agency.

. . .

"Low income municipality" means any municipality with a poverty rate for families of at least 15 percent, according to the most recent U.S. Census Bureau data.

"Medically indigent patient" means a person who requires nursing care or other home health agency services but who lacks sufficient resources to pay either the full amount of agency charges or any portion of those charges for the care (that is, income at or below the State Pharmaceutical Assistance for the Aged and Disabled (P.A.A.D.) guidelines) and who also lacks third party payment coverage (that is, insurance) for the full cost of the needed services.

. . .

"Reimbursable cost center" means a service such as nursing, physical therapy, occupational therapy, speech therapy, social work, and home health aide service, for which Medicare reimburses home health agencies.

. . .

8:33L-2.1 Service areas

(a)-(b) (No change.)

(c) Due to the complexity inherent in successfully establishing a new home health agency, the maximum number of counties that any applicant for a new home health agency shall propose to serve is one county or the sub-areas of two contiguous counties.

1. An exception to (c) above may be considered by the Department of Health in the case where an applicant for a new agency proposes to serve no more than two contiguous counties, each with a population density of less than 300 persons per square mile, according to the most recent available U.S. Census data. For the purpose of this chapter, these counties are Cumberland, Hunterdon, Salem, Sussex, and Warren. The request for an exception to (c) shall be granted, provided that the application complies with all other applicable requirements contained in this chapter.

(d) Certificate of Need applicants proposing to serve an area that extends more than 25 miles from the agency's chief office shall identify those strategies that will be implemented to assure coordination and standardization of home health care throughout the service area, including whether the agency will maintain branch offices in specified locations.

8:33L-2.2 Home health service utilization rates

(a) An applicant for a Certificate of Need to provide home health services shall demonstrate the capability to provide a minimum of 5,000 skilled nursing visits per year in the proposed service area, as described in N.J.A.C. 8:33L-2.1(a). In addition, the agency shall provide all other services required to comply with applicable licensure regulations pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(b) The following are exceptions to (a) above:

1.-2. (No change.)

3. Agencies proposing to serve a low income municipality or a special sub-population, as described in N.J.A.C. 8:33L-2.4(g) and (h). For these agencies, the applicant shall demonstrate the capability to provide a minimum of 2,500 skilled nursing visits per year, in addition to providing all other services required to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(c)-(d) (No change.)

8:33L-2.4 Certificate of Need requirements

(a) In addition to all other applicable required items of documentation specified in this chapter, applicants proposing to expand an existing home health agency's service area or to institute a new agency shall submit all of the following with their application:

1.-3. (No change.)

4. Documentation of home health care access problems in the service area. Certificate of Need approval shall only be granted in those instances where there are one or more of the following documented access problems and where the applicant is able to provide compelling evidence, to the satisfaction of the Department of Health, that these specific problems will be substantially ameliorated by the new agency. Where data from annual surveys conducted by the Department of Health form the basis for identifying the service area's access problems enumerated below, the most recent, annual home health agency survey data that are available at the time that the Certificate of Need applications are accepted for processing shall be utilized. Access problems to be considered include the following:

i.-ii. (No change.)

iii. Absence of existing home health agencies providing care in a proposed service area which offer "high-tech" services. For the purpose of this rule, "high-tech" services shall include mechanical ventilator care and intravenous and central line infusion therapies. These services shall be available to patients in the service area who require them, either through direct provision by one or more of the service area's home health agencies or through sub-contracting by the home health agencies with another licensed home health agency that provides the service directly. Annual licensure inspection reports and results of an annual survey conducted and reported by the Department of Health shall be used to determine provision of the aforementioned services by home health agencies in service areas.

iv. Lack of provision of a minimally acceptable level of services to medically indigent patients. A reasonable minimum level of care to the medically indigent population shall be inferred from the provision of charity care by each licensed home health agency in any service area at a cost equalling or exceeding three percent of the agency's total, annual, home health reimbursable cost centers. Results of annual surveys conducted by the Department of Health, supplemented by each agency's financial statement with a detailed allowance column and the agency's audited cost report from the most recent available year, shall be used for determining the level of charity care provided by existing agencies.

v. (No change.)

(b)-(d) (No change.)

(e) Applicants shall submit a copy of proposed staff education materials pertaining to the care of HIV-infected patients, including documentation regarding how universal precautions shall be instituted by all agency staff who are involved in direct patient care. As a condition of Certificate of Need approval, agencies shall agree not to deny care on the basis of diagnosis and shall agree to care for patients who are HIV-positive. In addition, applicants shall agree to enter into and maintain a formal affiliation with the Department of Health's AIDS Division to assure follow-up and case management of patients who are or may be HIV-infected.

(f) (No change.)

(g) To promote access to care for medically indigent patients, the Commissioner of Health shall give consideration to approving a new or expanding home health agency proposing to serve any low income municipality with a population of at least 50,000 or group of contiguous low income municipalities with a population of at least 50,000. Documentation shall be submitted by the applicant, to the satisfaction of the Department of Health, indicating that existing agencies serving the area are not offering adequate home health care access to the low income population. This criterion shall apply even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)4 above.

1. Documentation to be submitted by the applicant shall include a local community health care needs assessment/survey and letters from at least three referral sources (that is, health care facilities or social service agencies that are 100 percent corporately independent

from the applicant) citing specific instances during the prior 18 month period when patients were denied timely access to needed services by existing home health care agencies in the service area.

2. In addition to meeting other applicable requirements of this chapter, the applicant shall submit a plan documenting how charity care for medically indigent patients shall be provided and paid for, in an amount that exceeds the average amount being provided by other all home health agencies already serving the proposed service area.

(h) To promote the availability of care for special sub-populations (for example, pediatric patients or patients who are HIV-infected) that may have difficulty accessing needed home health services, the Commissioner of Health shall give consideration to approving a new or expanding agency, even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)4 above.

1. As a condition of Certificate of Need approval, home health agencies approved to serve a special sub-population shall be permitted to provide home health services only to members of the identified sub-population; all other patients shall be referred to other home health agencies in the service area.

2. In addition to complying with all other applicable requirements of this chapter, the applicant for a home health agency proposing to serve a special sub-population shall submit the following forms of documentation, to the satisfaction of the Department of Health:

i. Evidence that none of the existing agencies serving the area is offering adequate home health care access to the identified sub-population;

ii. Letters from at least three referral sources (that is, health care facilities or social service agencies that are 100 percent corporately independent from the applicant) citing specific instances during the prior 18 month period when patients within the sub-population were denied timely access to needed services by existing home health care agencies;

iii. A detailed description of the unique programs and services that will be offered by the proposed agency to meet the special needs of the sub-population and of how these programs and services will be integrated within the area's existing health care system;

iv. Evidence that the health problems of the sub-population can be substantially ameliorated by the forms of care that are typically provided by a home health agency;

v. A description of staff qualifications and strategies that will be implemented by the agency to recruit and retain staff with expertise in the care of the sub-population; and

vi. Verification that the agency will be financially feasible and that reimbursement from third party payers will be available for the majority of services to be provided by the agency.

8:33L-2.6 Transfer of ownership for home health agencies

(a)-(d) (No change.)

(e) An application for transfer of ownership shall not be approved if the agency which is the subject of the transfer application has not initiated the delivery of home health services, nor if it has ceased to provide these services, nor if it has substantially reduced services, nor if it has failed to achieve either the utilization rates for nursing visits specified in N.J.A.C. 8:33L-2.2 or the volume of nursing visits that was projected in the agency's most recently approved Certificate of Need application, whichever number of visits is greater.

(f) (No change.)

(g) As a condition of Certificate of Need approval of a transfer of ownership, the new agency shall provide charity care at a cost equaling or exceeding three percent of its total annual home health reimbursable cost centers. If the transferred agency was providing more than three percent charity care, the new agency shall, to the satisfaction of the Department of Health, be required to propose and implement a program to insure that a comparable amount of charity care shall be provided in the service area on a ongoing basis subsequent to the transfer of ownership.

(h) (No change.)

8:33L-2.7 Care for medically indigent patients

(a) As a condition of Certificate of Need approval, applicants proposing new agencies or expansions of existing agencies shall be required to provide charity care at a cost equaling or exceeding three percent of their total annual reimbursable cost centers. Where agency expansions are approved, this minimum three percent requirement will apply to the agency's total annual home health reimbursable cost centers. This percentage shall be achieved within one year of license issuance and maintained annually.

(b) (No change.)

(c) Pursuant to the prioritization criteria identified in N.J.A.C. 8:33L-2.4(b)2, Certificate of Need applicants proposing to provide more than the required three percent charity care shall accept as a condition of approval that failure to provide the proposed percentage of charity care annually shall, at the discretion of the Commissioner of Health, result in revocation of the agency's license or other licensure penalties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need

Psychiatric Inpatient Beds: Adult Closed Acute Psychiatric Beds

Adopted Repeal and New Rules: N.J.A.C. 8:43E-3

Proposed: July 3, 1989 at 21 N.J.R. 1785(a).

Adopted: October 3, 1989 by Thomas A. Burke, Ph.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: October 16, 1989 as R.1989 d.560, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: November 6, 1989.

Expiration Date: December 11, 1992.

Summary of Public Comments and Agency Responses:

Written comments were received from the following: the New Jersey Department of the Public Advocate, the New Jersey Division of Mental Health and Hospitals, the Mental Health Association in New Jersey, the New Jersey Hospital Association, the University of Medicine and Dentistry of New Jersey, and Bergen Pines County Hospital.

COMMENT: The Department of the Public Advocate states that the definition for "adult closed acute psychiatric beds" restricts admissions to individuals who have been screened and that this is contrary to the screening law, which contemplates that any committed person may be referred to a short-term care facility, if appropriate.

RESPONSE: The definition itself is not restrictive in regard to admissions only for individuals who have been screened. However, N.J.A.C. 8:43E-3.7(a) states that, "Admission criteria shall reflect that only persons who have been screened through the designated screening center shall be accepted for admission." This is not contrary to the Mental Health Screening Law, N.J.S.A. 30:4-27.1 et seq. While the law does provide for two routes of involuntary admission, this pertains to all such admissions to any facility. The section on short-term care facilities does not prescribe routes of admission. The Department of Health remains of the opinion that adult closed acute psychiatric beds are scarce and costly health care resources and admission to them should be restricted to screening centers in order to assure access irrespective of the financial status or insurance coverage of the patient. Moreover, this route of admission assures consideration of the entire system of care and initiates post discharge follow-up.

COMMENT: The Department of the Public Advocate states that the definition for "inpatient screening beds" is inconsistent with a section of the Screening Law, N.J.S.A. 30:4-27.5, which does not authorize such beds.

RESPONSE: The Department of Health agrees that inpatient screening beds are not highly desirable for carrying out the intent of the screening law. The definition is required in the rule because these beds are cited in the competitive review section of the rules, N.J.A.C. 8:43E-3.22. This is required for their orderly conversion to adult closed acute psychiatric beds through the Certificate of Need process.

COMMENT: The Department of the Public Advocate states that the proposed rules allow admissions to adult closed acute psychiatric beds from other hospitals or from other units within the same hospital and that these admissions may be made inappropriately without following the screening procedure.

RESPONSE: The Department of Health agrees that this point needs clarification since it wants to assure that involuntary admissions are made appropriately. The Department therefore has changed N.J.A.C. 8:43E-3.7(c) to add the sentence: "Involuntary commitment procedures may then be initiated pursuant to N.J.S.A. 30:4-27 et seq."

COMMENT: The Department of the Public Advocate states that N.J.A.C. 8:43E-3.7(d) does not effectively prevent discriminatory admission criteria for detainer patients.

RESPONSE: There is no legislative intent in the Screening Law, N.J.S.A. 30:4-27 et seq., that indicates that short-term care facilities should accept persons with charges or detainers.

COMMENT: The Department of the Public Advocate states that the accessibility of care section does not adequately protect patients with limited ability to pay.

RESPONSE: This assurance is provided for in the section on admission criteria where the applicant is required to provide the policy on acceptance of individuals with limited ability to pay.

COMMENT: The Department of the Public Advocate states that the section on continuity of care does not address the provision of non-psychiatric medical services.

RESPONSE: The Department of Health intends that medical services must be made available to psychiatric patients when required. In order to make this concern more explicit, paragraph 13, "Medical diagnosis and treatment", will be added to N.J.A.C. 8:43E-3.13(d).

COMMENT: The Department of the Public Advocate states that disclosure of patient information to liaison workers should not be permitted in the liaison services section unless patient permission is obtained.

RESPONSE: The provision of this patient information is relevant to the patient's treatment and required for planning the most appropriate followup care. Lack of followup care can result in readmission to a more restrictive level of care. The benefits of access to this information thus outweigh any negative aspects of disclosure.

COMMENT: The Department of the Public Advocate states that the section on transfer to State or county facilities requires clarification on meeting the requirements of N.J.S.A. 30:4-27.10(f) which specifies the preconditions before transfers to institutions.

RESPONSE: The Department of Health agrees that this section can benefit from clarification. The words "in accordance with N.J.S.A. 30:4-27(f)" will be inserted in N.J.A.C. 8:43E-3.11(a).

COMMENT: The Department of the Public Advocate states that the section on transfer to State or county facilities requires assurance that such transfers will be undertaken only as a last resort after all other available therapeutic approaches have failed.

RESPONSE: This section already calls for liaison staff to ensure that all community alternatives have been explored. No further clarification or assurance is required.

COMMENT: The Department of the Public Advocate states that N.J.S.A. 30:4-27.11 requires short-term care facilities to assist their involuntary patients to obtain access to a private or public appointed attorney and that this as well as other assurances on patient's rights should be covered in the section on treatment program.

RESPONSE: The law merely requires the provision of information on legal services. In order to assure concern for patient rights, the Department of Health will request applicants to address this issue by adding the sentence: "The description should demonstrate recognition of patient's rights and an ability to comply with them." in N.J.A.C. 8:43E-3.12.

COMMENT: The Department of the Public Advocate states that the treatment program section requires more detailed requirements for the provisions for handicapped patients.

RESPONSE: This section as written requires a description of how the applicant will accomplish the provision of services for handicapped patients. This is sufficient to accomplish this purpose without becoming overly prescriptive.

COMMENT: The Department of the Public Advocate states that the treatment program section lacks clarification on the diagnosis and treatment of physical conditions.

RESPONSE: This is already addressed in a previous response.

COMMENT: The Department of the Public Advocate states that the section on the physical environment could permit facilities to combine their closed and acute units and that this would result in a more restrictive setting for individuals on open units.

RESPONSE: This section as written assures the maximum flexibility of applicants to design a physical environment for open and closed subunits. It facilitates the provision of a less restrictive setting for closed patients without impinging on open patients.

COMMENT: The Department of the Public Advocate states that the section on competitive review criteria requires a section on patient's safety or rights.

RESPONSE: The Department of Health will review applications to assure patient safety and patient's rights. However, review experience has shown that such criteria are not quantifiable and are therefore inappropriate as competitive review criteria.

COMMENT: The Division of Mental Health and Hospitals requests clarifying language in the definition of "adult closed acute psychiatric beds".

RESPONSE: The Department of Health agrees that the words "intensive acute" and "mentally ill" will add clarification to this definition. This clarifying language will be added to the definition of "adult closed acute psychiatric beds" in N.J.A.C. 8:43E-3.2.

COMMENT: The Division of Mental Health and Hospitals requests clarification of the definition of "adult open acute psychiatric beds".

RESPONSE: The Department of Health agrees. The words "designated by the Department of Health" will be inserted in the definition of "adult open acute psychiatric beds" in N.J.A.C. 8:43E-3.2 to differentiate this designation from that performed by the Department of Human Services.

COMMENT: The Division of Mental Health and Hospitals requests clarification of the definition for "short-term care facility".

RESPONSE: The words "by the Department of Human Services" will be inserted to differentiate designation from that performed by the Department of Health. The words "of mental illness and" will be added to provide clarification.

COMMENT: The Division of Mental Health and Hospitals requests clarification in the section on designation.

RESPONSE: The words "need to be" will add clarification to the need for eligibility for designation which follows certificate of need approval.

COMMENT: The Division of Mental Health and Hospitals requests clarification of the second sentence in admissions criteria.

COMMENT: The words "mental illness" will be added to provide clarification.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 3. ADULT CLOSED ACUTE PSYCHIATRIC BEDS

8:43E-3.1 Scope

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds provided in general acute care and special hospitals throughout the State. This subchapter sets forth the criteria by which the Department of Health will review certificate of need applications for the establishment of new adult closed acute psychiatric beds in an existing or proposed licensed hospital in New Jersey.

(b) Treatment of individuals who meet the commitment standard, in adult closed acute psychiatric beds organized into a short term care facility, is viewed as one component in a continuum of treatment options for mentally ill adults. This service is designed to provide short term care for patients deemed dangerous to self or others and is one critical element of a comprehensive network of mental health services in the community. This approach encourages and supports the delivery of services in the most appropriate and least restrictive setting. This subchapter does not apply to facilities proposing to establish other psychiatric inpatient services for which planning rules are in effect. The rules in this subchapter specifically address the development of adult closed acute psychiatric beds.

8:43E-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Adult closed acute psychiatric beds" means licensed psychiatric beds in a separate unit or subunit of a New Jersey hospital, specifically designated as a mental hospital by the Commissioner of Human Services, which provides ***intensive acute*** treatment services for persons experiencing an acute episode of a psychiatric disorder. All such persons are referred by a screening center and may be admitted involuntarily or may be determined to be ***mentally ill and*** dangerous to self or others and willing to receive treatment voluntarily.

"Adult open acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a New Jersey hospital ***designated by the Department of Health*** for the provision of intensive evaluation, stabilization, and treatment of persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have a length of stay which averages 30 days or less.

"Affiliation agreement" means a written agreement between two service providers specifying referral and discharge criteria, admission procedures, responsibilities, timeframes, and services to be performed.

"Department" means the New Jersey State Department of Health.

"Inpatient screening beds" means licensed psychiatric beds within, or contiguous to, a licensed psychiatric unit of a licensed New Jersey hospital, for the provision of intensive treatment, evaluation and stabilization of adults who are experiencing an acute episode of a psychiatric disorder. All persons admitted are under involuntary commitment order. Maximum stay under involuntary commitment order in an inpatient screening bed is 72 hours.

"Liaison" means a mental health worker who is an employee of a Division of Mental Health and Hospitals contracted community mental health agency and whose function is to assist the STCF's treatment team with discharge planning and linkage to services in the community.

"Mental health service area" means a service area as defined by the New Jersey Division of Mental Health and Hospitals, in accordance with N.J.S.A. 30:9A-1 et seq.

"Mental hospital" means a facility, or portion thereof, designated by the Commissioner of Human Services for the care and treatment of individuals with mental illness on an inpatient basis who are admitted under the provisions of N.J.S.A. 30:4-27.1.

"Screening center" means a public or private ambulatory care service designated by the Commissioner of Human Services which provides mental health services including assessment, emergency, and referral services to mentally ill persons in specific geographic areas. A designated screening center is the facility in the public mental health care treatment system wherein a person believed to be in need of commitment to a short term care facility (STCF) undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be most appropriately provided.

"Short term care facility (STCF)" means a psychiatric unit within a general hospital or special hospital which is designated ***by the Department of Human Services*** to provide intensive, acute treatment to individuals who meet the commitment standard of ***mental illness and*** dangerous to self or others. They consist of *[closed]* adult ***closed*** acute psychiatric beds. The average length of stay is 30 days or less.

8:43E-3.3 Submission of certificate of need applications

(a) Applications for establishment of new psychiatric adult closed acute psychiatric beds will be under batching procedures as determined by the Department and other policies and procedures set forth in N.J.A.C. 8:33-1.5. The following schedule shall be initiated upon adoption of these rules:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

8:43E-3.4 Designation and service area

(a) Applicants shall demonstrate their ability to receive formal designation as a short term care facility in accordance with N.J.A.C. 10:31, developed by the Department of Human Services. All STCFs shall *[also be deemed eligible for designation]* ***need to be designated*** by the Commissioner of the Department of Human Services as a Mental Hospital under N.J.S.A. 30:4-27.1 et seq. Preference will be given to units which provide a combination of adult open acute and adult closed acute psychiatric beds.

(b) The entire county in which the applicant is located shall be the preferred service area. Applicants are encouraged to meet the entire available bed need of their county. If unable to do so, they shall, at a minimum, provide for the estimated bed need of the mental health service area in which they are located. Information on the delineation of mental health service areas is available from the New Jersey Division of Mental Health and Hospitals.

8:43E-3.5 Unit size

(a) The minimum size of any psychiatric unit consisting exclusively of adult closed acute psychiatric beds shall be 12 beds.

(b) The minimum size of any psychiatric unit consisting of adult closed acute psychiatric beds and of adult open acute psychiatric beds shall be 20 beds.

(c) The Department may consider exceptions to (b) above when the applicant demonstrates that the proposed unit is farther than 40 miles from any existing unit and the need as contained in N.J.A.C. 8:43E-2.4 and 4.6 indicates a need for fewer than 20 beds.

(d) The maximum size of any unit containing adult closed acute psychiatric beds shall be 40 beds.

8:43E-3.6 Bed need

(a) Each applicant for adult closed acute psychiatric beds shall demonstrate the need for the proposed bed capacity in its proposed service area through application of the bed need methodology in (d) below. Justification of the bed need shall take into account the percentage of this population which would actually be treated on the unit, based on the applicant's statement of both exclusionary and inclusionary admission criteria. Populations to be excluded from admission should not be counted in application of the methodology.

(b) Each applicant shall also justify the need for adult closed acute psychiatric beds through provision of the following documentation:

1. Projected average length of stay shall reflect an acute course of treatment. Such a projected length of stay shall not be greater than 120 percent of the State average length of stay for existing adult closed acute psychiatric beds.

2. Projected numbers of admissions to the proposed adult closed acute psychiatric beds shall be justified by documentation through letters of support from the local screening center(s), local inpatient units and from the State hospitals indicating the number of involuntary commitments which are currently admitted.

(c) When the application is for the purpose of increasing the total number of adult psychiatric beds (rather than conversion of existing psychiatric beds to STCF status), the applicant shall additionally demonstrate the following:

1. Occupancy rates for all existing adult psychiatric beds in the hospital shall have exceeded 90 percent in the previous 12 months;

2. Occupancy rate at the proposed new capacity will exceed 80 percent within two years of operation; and

3. Compliance with the Hospital Policy Manual sections on occupancy rates (N.J.A.C. 8:43I-1.11) and on the addition or replacement of beds (N.J.A.C. 8:43I-1.12).

(d) The general formula for the determination of adult closed acute psychiatric bed need is as follows:

1. New Beds Needed = Total Beds Needed minus Available Beds

2. Total Beds Needed =

$$\frac{\text{Adjusted Beds per 100,000} \times \text{county population}}{100{,}000}$$

3. County population shall be defined by New Jersey Department of Labor projections, economic/demographic model, for one year beyond the date the need calculation occurs.

4. Adjusted Beds per 100,000 = Statewide Mean—(Standard Deviation x Average z Score

5. Average z Score =
$$\frac{\text{Actual Use z Score + Public Hospital z Score}}{2}$$

6. Actual Use z Score =
$$\frac{\text{Statewide Mean Need per 100,000 minus County Need per 100,000}}{\text{Standard deviation}}$$

7. County Need per 100,000 =
$$\frac{\text{Unadjusted Beds Needed}}{\text{County population x 100,000}}$$

8. Unadjusted Beds Needed =
$$\frac{\text{Adjusted Bed Days}}{365} \times \frac{\text{Admissions}}{\text{Terminations}} \times \frac{.90}{.85}$$

9. Adjusted Bed Days is derived from the actual patient days at State and county mental hospitals in the following manner:

Actual Days at Public Hospital	Adjusted Bed Days for Formula
1-16	Actual
17-21	16
22-40	Actual X .75
41-80	30
80 +	3

10. The "Public Hospital z Score" is derived from the most recently available version of the Division of Mental Health and Hospitals' need-based plan. This plan is available from the New Jersey Division of Mental Health and Hospitals, CN 700, Trenton, NJ 08625.

11. "Available beds" are the sum of all existing and certificate of need approved adult closed ***acute*** psychiatric beds as determined by the New Jersey Department of Health.

8:43E-3.7 Admission criteria

(a) Written admission criteria and policies shall be developed by the facility and included as part of the certificate of need application. The criteria shall include care for patients who are found to meet the standards *[for]* ***of mental illness and*** dangerous to self or other***s*** at the time of admission, thus requiring an intensive level of care. Such patients need not be admitted involuntarily.

(b) Admission criteria shall reflect that only patients who have been screened through the designated screening center shall be accepted for admission.

(c) When a patient is in a voluntary psychiatric unit in another hospital and transfer to a STCF is requested, the screening center, in consultation with the STCF, shall determine if all other alternatives have been explored and if the patient meets the admission criteria of the STCF. ***Involuntary commitment procedures may then be initiated pursuant to N.J.S.A. 30:4-27 et seq.***

(d) Written admission criteria shall reflect the following:

1. Diagnostic and other patient characteristics or factors which render a patient acceptable and unacceptable for admission;

2. Policy on acceptance of individuals with limited ability to pay for treatment; and

3. Policy on acceptance of individuals with Medicaid insurance coverage.

8:43E-3.8 Accessibility of care

(a) The applicant shall provide assurance that patients who are referred by the designated screening center shall be admitted immediately, if a bed is available and the patient meets the admission criteria.

(b) The applicant shall assure that it has a treatment policy whereby no patient will be discharged prior to the completion of treatment, as a result of the inability to pay.

(c) The applicant shall assure that individuals previously hospitalized in any psychiatric facility shall not be denied admission to the unit solely because of such previous hospitalization, or as an administrative response to the individual's behavior during such previous hospitalization.

(d) The applicant shall assure that individuals with a single diagnosis of alcohol or drug abuse shall not be accepted for treatment in adult closed acute psychiatric beds.

(e) The applicant shall assure that patients with a dual diagnosis of substance abuse and psychiatric disorder are accepted, if they meet the admission criteria. Clinical services for this population shall be assured.

(f) The applicant shall provide assurance of compliance with all applicable civil rights and non-discrimination requirements of Federal and New Jersey law.

8:43E-3.9 Continuity of care

(a) Applicants seeking to establish adult closed acute psychiatric beds (STCF) shall provide the following:

1. A description of how the proposed program would fit into a comprehensive system of care. Applicants shall show affiliation with the screening center and other community-based programs within the geographic area through formal affiliation agreements;

2. A description of intensive inpatient care which focuses on crisis intervention and is directed toward resolution of a psychiatric emergency and attempts to restore the individual to his or her previous level of functioning; and

3. A description of the comprehensive diagnostic evaluation to assess all the factors contributing to the crisis.

(b) The applicant shall document its intent to enter into affiliation agreements which provide for immediate access and continuity of psychiatric care including medication. Draft affiliation agreements and names of provider agencies shall also be submitted which link the adult closed acute psychiatric beds with specialized facilities providing care to the developmentally disabled and substance abusers as well as State, county, and other hospitals providing intermediate and special psychiatric beds.

1. Draft affiliation agreements shall clarify admission, referral, joint treatment/discharge planning, transfer, discharge and service relationships between agencies. At a minimum, the affiliation agreements shall address the following areas:

i. Referral guidelines for admission to the STCF's adult closed acute psychiatric beds, reflecting access through the screening center;

ii. Guidelines for referring consenting STCF patients to the community provider, which include provision for immediate access and continuity of medication provisions; and

iii. Guidelines for linkage responsibility through the liaison staff of ***the contracted*** local mental health agency.

8:43E-3.10 Liaison services

(a) The proposed affiliation agreement between the STCF and the local mental health liaison agency required as part of a certificate of need application shall provide for the following:

1. Liaison privileges to ensure that the liaison worker has access to the patient record, information sharing, and patient assessment;

2. Assurances that liaison information in the form of a community assessment form is part of the treatment team process;

3. One professional staff from the STCF to serve as the liaison contact person;

4. Guidelines for liaison participation in the STCF treatment team meetings including liaison input regarding discharge to the appropriate combination of private and public community services; and

5. A written discharge plan provided to the liaison worker for patients entering the public mental health system prior to hospital discharge.

(b) The proposed affiliation agreement with the liaison agency that is submitted as part of the application shall also specify hospital and liaison responsibilities for patients who are discharged within 72 hours.

8:43E-3.11 Transfer to State or county facility

(a) Written criteria for the transfer of patients from the STCF to a county or State hospital ***in accordance with N.J.S.A. 30:4-27(f)*** shall be submitted as part of the application.

(b) The applicant shall submit a draft transfer agreement with the State or county hospital, specifying roles and responsibilities. The applicant shall assure that such an agreement will be in place prior to licensure or designation.

(c) Written transfer criteria shall reflect the following:

1. Diagnostic and other patient characteristics and factors used as indicators for transfer at or beyond the units' established average length of stay;

2. Diagnostic and other patient characteristics and factors such as length of past treatment history used as indicators for transfer earlier than the units established average length of stay;

3. Assurances that all patients shall be assessed by the liaison staff prior to transfer to ensure that all community alternatives have been explored; and

4. The applicant shall assure its participation in the System Review Committee pursuant to N.J.S.A. 30:40-27.1 et seq. and N.J.A.C. 10:31-5. This Committee will review transfers into the STCF from the adult open acute psychiatric beds, as well as transfers to State and county hospitals.

8:43E-3.12 Proposed treatment program, staffing pattern, and discharge planning

The proposed treatment program, staffing pattern, and discharge planning process shall be identified within the certificate of need application. All applicants for adult closed acute psychiatric beds shall demonstrate the ability to comply with licensure standards promulgated by the New Jersey Department of Health as they apply to hospital psychiatric units and with Title XIX (Medicaid) staffing standards, upon project completion. The treatment program and staffing pattern shall be fully described and shall be adequate and appropriate to implement the program. ***The description should demonstrate recognition of patient's rights and an ability to comply with them.***

8:43E-3.13 Treatment program

(a) The applicant shall describe a treatment program which includes a full range of psychiatric, diagnostic, and therapeutic interventions, including, but not limited to, individual, group psychopharmacological, family, milieu, adjunctive, and recreational therapy.

(b) The description of the treatment shall, at a minimum, focus on the following:

1. Protecting the individual from harming himself or herself or others;

2. Conducting a comprehensive assessment of the individual, with appropriate input from liaison in order to understand his or her psychiatric, medical, social sevice, and other needs;

3. Stabilizing and treating the acute disorder and return of the individual to his/her pre-crisis level of functioning; and

4. Development of an individualized treatment plan, in conjunction with the patient, and incorporating the appropriate liaison input for the coordination of service needs upon discharge.

(c) The applicant shall discuss the provisions which will be made for the patient's non-psychiatric care, including medical and dental services.

(d) The applicant shall describe how the following will be accomplished:

1. Extended evaluations;

2. Lab studies;

3. Evening and weekend therapeutic and recreational activities;

4. Staffing and procedures to provide close medication monitoring and education;

5. Staffing and safety precautions to provide for unscheduled one to one monitoring;

6. Restricted privileges and precautions;

7. Use of seclusion and restraints;

8. Hospital formulary, to include appropriate stock medications;

9. Provision for evening and weekend consultation with the patient's family;

10. Provision for handicapped patients;

11. Provision for HIV positive individuals and AIDS patients; *[and]*

12. Quality assurance*[.]* ***; and***

13. Medical diagnosis and treatment.

8:43E-3.14 Staffing pattern

(a) The applicant shall describe how SCTFs shall be staffed to assure quality of care and the availability of an appropriate variety of staff. The applicant shall describe the management, organization, and staffing of the unit. The applicant should address the guidelines which will be used in staffing the unit and the process by which the unit will provide for an enhanced staff-to-patient ratio when necessary for compliance with patient rights requirements. The applicant shall submit a plan for the provision of adequate psychiatric care for indigent patients.

(b) The applicant shall describe how the STCF shall be staffed by a multidisciplinary team which should, at a minimum, include the following: a full time unit coordinator, board eligible psychiatrist(s), registered nurse(s), social worker(s), adjunctive therapists and availability of consultants, such as certified alcoholism and drug abuse counselors, psychologists, and others as required to meet the special needs of the patients served. A description and listing of an appropriate staff in order to have an active seven day a week treatment program shall be provided.

8:43E-3.15 Discharge and transfer planning

(a) The applicant shall describe the discharge planning process in writing. The description shall include provisions for discharge planning to be conducted as an ongoing process, beginning at admission and involving liaison staff. The discharge planning process shall also apply to patients being transferred to another facility. The applicant shall assure that:

1. A mechanism to assure that patient consent is solicited whenever possible and is obtained prior to transfer or other disclosure of patient information where required by law;

2. A treatment team, made up of representatives from the various disciplines (listed in N.J.A.C. 8:43E-3.12(b)2), the liaison, and a member of the patient's natural support system, when appropriate, shall meet as often as necessary to develop an appropriate plan;

3. A comprehensive psycho-social history and summary of all assessments made by the various disciplines shall be made available for the treatment team in order to facilitate discharge planning; and

4. The liaison staff shall assist the treatment team in coordinating referrals and take whatever steps are necessary to ensure a smooth transition from hospital to community care. The patient's written discharge plan shall be provided to the liaison, prior to hospital discharge.

8:43E-3.16 Appropriateness of cost

(a) Reimbursement for adult closed acute psychiatric beds provided in general acute care hospitals will be in accordance with the methodology required by N.J.S.A. 26:2H-18, Chapter 83 of the Public Laws of 1978, and all rules promulgated pursuant to Chapter 83.

(b) Reimbursement for adult closed acute psychiatric beds provided in special hospitals shall be pursuant to SHARE reimbursement rules at N.J.A.C. 8:31A and the following:

1. The reasonableness of the projected rates shall be determined by the Department, in comparison to average rates of existing New Jersey facilities providing adult closed acute units within two years of operation.

2. The method of physician billing to patients shall be detailed. Any physician costs included in the per diem rates shall be itemized and the projected charges identified.

3. All ancillary and clinical support services which may be routinely provided to and charged to patients shall be detailed. A list of standard laboratory and diagnostic tests required for admission shall be provided. No certificate of need application shall be approved unless all mandatory laboratory and diagnostic tests as required are justified as medically necessary by the applicant.

4. The policies and procedures for informing the patient or family of the charges for care prior to or upon admission shall be detailed.

5. The applicant shall submit its policy regarding third party reimbursement and provision of care to indigent patients. As a minimum, the applicant shall provide an estimate of the level of indigent patients in the service area and shall provide assurance that these patients will be served.

8:43E-3.17 Capital financing

Financing of hospital construction, modernization/renovation, or major moveable equipment projects require a minimum equity contribution pursuant to N.J.A.C. 8:33-2.15(a)2.

8:43E-3.18 Physical environment

(a) The application shall provide schematics of the proposed floor plan and shall assure, at a minimum, compliance with the following design elements:

1. The design of adult closed acute psychiatric beds functioning as a STCF should afford a non-institutionalized atmosphere, yet provide a safe environment for patients and staff. The design should avoid giving the arriving patient the impression of control, entrapment or congregate care. The environment shoud be normalized, to include an appropriate combination of private, semi-private/semi-public, and public space. The following considerations shall be addressed:

i. Balance between privacy needs of patients and surveillance responsibilities of staff, especially with reference to seclusion rooms and unit exits;

ii. Seclusion rooms should be properly ventilated and appropriately furnished for patient safety and comfort;

iii. Reduction of stimulation in specified areas or rooms utilizing such measures as: the segregation of noisy and quiet activities and the use of muted color schemes;

iv. Separation of the unit from other units of the hospital and prohibition of its use as a thoroughfare to other units;

v. Location with view of landscaped or park-like setting and with access to outdoors (whenever possible); and

vi. Elimination of physical conditions which could facilitate suicide attempts, including, but not limited to, exposed popping conduits or other weight supporting lines or objects;

2. Units having adult closed acute and adult open acute psychiatric bed sections should be designed with a lockable door between sections, or the entire unit must be lockable. Doors may remain open, whenever patient condition, ward climate, and staffing limits permit, to test the ability of acute disturbed patients to tolerate group activities, recreation, and free access to service areas in the voluntary section of the unit.

3. The STCF unit shall be in compliance with current physical plant construction guidelines for acute care psychiatric beds in general hospitals contained in the "Guidelines for Construction and Equipment of Hospital and Medical Facilities," published by the U.S. Department of Health and Human Services, Health Resources and Services Administration, and incorporated herein by reference.

8:43E-3.19 County mental health board review

(a) The county mental health board(s) of the service area proposed to be served by the applicant shall receive a copy of the certificate of need application, for their formal action, at the time of submission to the Department. A letter of endorsement from the board(s) or its administrator reflecting board action shall be considered a significant factor in assessing local need for the project. County mental health board comments should be forwarded to the Department of Health, Health System Agencies, and to the Division of Mental Health and Hospitals in a timely manner, consistent with the certificate of need requirements of N.J.A.C. 8:33. Applicants are encouraged to consult with their county mental health board during the planning stages and prior to submission of the application to ensure that local needs are being met.

8:43E-3.20 New Jersey State Department of Human Services endorsement

(a) The New Jersey State Department of Human Services will review every application for adult closed acute psychiatric beds. A statement of non-endorsement by the Department of Human Services, due to the applicant's inability to meet the criteria for designation as a STCF or as a mental hospital shall be considered a reason for denial by the Department of Health.

(b) Applicants are encouraged to consult with the Division of Mental Health and Hospitals staff during the planning stage. Technical assistance is available from the Division of Mental Health and Hospitals regarding program, architectural standards, affiliation agreements and designation process.

8:43E-3.21 Data

Each applicant shall agree to report utilization data for adult closed acute and adult open acute psychiatric beds, as required by the Departments of Health and Human Services.

8:43-3.22 Competitive review

(a) In geographic areas where more than one applicant has filed a certificate of need to establish additional adult closed acute psychiatric beds, the Department may elect to approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all standards and guidelines in this subchapter and all other laws and rules.

2. The highest level of access to services by the indigent and by persons under cost-based insurance;

3. Units which can be implemented in the most cost effective and efficient manner, measured by capital costs, operating costs, and reduction of excess acute care bed capacity in the area;

4. Hospitals which provide screening services or are closely affiliated with a screening service;

5. Units which are converting screening psychiatric beds to adult closed acute psychiatric beds and which will meet the needs of their geographic area or county;

6. Units which provide for the bed need of their designated STCF geographic area or county;

7. Units which meet the standard for geographic accessibilty, that is, units which can be reached from any point in the applicant's primary service area within one hour of travel time;

8. Projects which are determined to provide the highest level of quality of care in the proposed unit, as documented on the basis of staffing pattern, site review reports, and track record for serving persons who are seriously mentally ill;

9. Projects which have the endorsement of the county mental health board(s) of the proposed service area. (See N.J.A.C. 8:14-3.19); and

10. Units which demonstrate affiliation with the area screening center, with residential and other ambulatory services, including partial care, outpatient services, and other crisis stabilization services for the purpose of linking the patient to the appropriate after-care services.

8:43E-3.23 Enforcement and sanctions

The Department, in conjunction with the Department of Human Services, shall monitor compliance with terms and conditions of this application. The Department will determine if the recipient of certificate of need, or its successor, is operating a service which materially differs from the representation made in its application for the certificate of need. Failure to demonstrate compliance shall constitute an adequate basis for licensure suspension or revocation. Such suspension or revocation shall be conducted in accordance with N.J.S.A. 52:14B-1 et seq., the Adminstrative Procedure Act, and N.J.A.C. 1:1, the Uniform Administrative Procedure Rules.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Psychiatric Inpatient Beds Child and Adolescent Acute Psychiatric Beds

Adopted Amendment: N.J.A.C. 8:43E-4.5

Proposed: August 21, 1989 at 21 N.J.R. 2459(a).

Adopted: October 13, 1989 by Thomas A. Burke, Ph.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: October 16, 1989 as R.1989 d.561, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: November 6, 1989.
Expiration Date: December 11, 1992.

Summary of Public Comments and Agency Responses:

Written comments were received from the following: Senator William R. Gormley, the New Jersey Division of Mental Health and Hospitals, the University of Medicine and Dentistry of New Jersey and the Salem County Mental Health Board.

COMMENT: Senator Gormley questions the application of the revised formula to Atlantic, Cape May and Cumberland Counties. The estimated need for this three county area would be reduced from 20 to 14 beds.

RESPONSE: The Department of Health initiated a revision of the formula for estimating this need after consultation with the Division of Mental Health and Hospitals and in response to recent Certificate of Need review experience. The formula in the existing rule has an inherent statistical flaw that overestimates need for small population counties and severely underestimates need for large population counties. The greatest impact was on Essex and Hudson Counties which had less beds allocated to them than the State rate even though they had the greatest socio-economic indicators for the use of child and adolescent psychiatric beds. The Department was thus unable to approve the expansion of child and adolescent units for counties with the greatest need in the State. The new formula also reduces the predicted future need for the Atlantic-Cape May-Cumberland area from 20 to 11 beds. These three counties will then have a bed rate in the new formula that approximates the State rate. The old formula gave them a bed rate that was 1.8 times the State average. The total number of beds in the formulas is being increased from 162 to 180 beds. Both formulas are based on actual children treated by the mental health system or served by the criminal justice system. The Department has been advised by national experts not to overestimate the number of beds in order to avoid inappropriate admissions of this vulnerable group of patients. The Department has approved 14 beds for the South Jersey Hospital System at Millville Hospital in response to their application at a time when there was a calculated need for 20 beds under the existing formula. The applicant will receive permission to move all 14 of these approved beds from Millville Hospital to Bridgeton Hospital. Applicants can request additional beds under the rule if they demonstrate through sufficient occupancy that additional beds are needed after implementation of the project.

COMMENT: Senator Gormley and the Salem County Mental Health Board state that the use of 1985 data may not adequately reflect the present need for such beds.

RESPONSE: The 1985 data is the most recent reliable data available. The subsequent closure of Trenton Psychiatric Hospital and crowding at Arthur Brisbane makes present data unreliable and unusable. The Department will recalculate the need when more up-to-date data becomes available.

COMMENT: The Division of Mental Health and Hospitals and the University of Medicine and Dentistry write in support of this revision of the formula as providing a more equitable distribution of child and adolescent acute psychiatric beds.

COMMENT: The Division of Mental Health and Hospitals states that N.J.A.C. 8:43E-4.5(b) contains an error. The number 21 for the number of counties should be corrected to the number 53 for the number of service areas.

RESPONSE: The Department of Health is in agreement that the number is 53. N.J.A.C. 8:43E-4.5(b) of the rule has already been changed to reflect this correction. No further change is required.

Full text of the adoption follows:

8:43E-4.5 Bed need

(a) The general formula for the determination of Child and Adolescent Acute Psychiatric Bed Need is as follows:

New Beds Needed = Total Beds Needed minus Available Beds

(b) Total Beds Needed $= \frac{\text{Statewide Beds Needed}}{53}$ plus $\frac{\text{SD} \times (\text{T-50})}{10}$

1. SD = Standard deviation of bed need estimate for each service area

2. T = Average T score of bed need distribution and T score of service area specific children's mental health risk factor

3. T Score for bed need $= \frac{\text{Average bed need minus mean bed need}}{\text{SD}} \times 10 + 50$

4. Average bed need $= \frac{\text{Normative bed need plus Actual bed use}}{2 \times .85}$

5. Normative Bed Need = Total annual pt. days needed in State $\times \frac{\text{Service area child population}}{\text{State children's population} \times 365}$

6. Actual Bed Use $= \frac{\text{Annual patient days utilized by children in each service area}}{365}$

7. Estimated Annual Patient Days Needed in State equals the sum of patient days in the following categories:

i. Patient days in existing Children's Crisis Intervention Service (CCIS) Units as contained in the official inventory of general hospital and free-standing beds;

ii. General hospital psychiatric patient days for children and adolescents, excluding any hospital-based CCIS unit patient days;

iii. 75 percent of the patient days at Trenton State Hospital, calculated by service area, for 90 percent of admitted children and adolescents, using their first 30 days of hospital stay;

iv. 75 percent of the patient days at the Arthur Brisbane Children's Treatment Center (ABCTC), for all admitted children using their first 30 days of hospital stay;

v. Annual patient days expected by estimating the number of children and adolescents refused admission to a CCIS unit due to a lack of capacity. An Average Length of Stay (ALOS) of 22.6 days utilized to reflect average of CCIS units;

vi. Patient days expected by the diversion of children and adolescents requiring acute inpatient psychiatric treatment from the juvenile justice system. Based on 7.5 percent of juvenile violent crimes, multiplied by CCIS ALOS (22.6 days).

8. T Score for Children's Mental Health Risk Factor =

$\frac{\text{Service Area Mental Health Risk Factor-Mean Risk Factor}}{\text{Standard Deviation of Service Area Risk Factors}} \times 10 + 50$

9. Service Area Mental Health Risk Factor equals the mental health inpatient need scores for children and adolescents which were derived for each New Jersey mental health service area in a statistical procedure based on the correlation between the treated prevalence and incidence of mental illness among children and adolescents and

28 area characteristics such as poverty, child abuse, school dropout rate, infant mortality and others.

(c) Available Beds equals child and adolescent acute psychiatric inpatient beds as defined in N.J.A.C. 8:43E-4.3 which have been approved through the Certificate of Need process or are in operation.

(d)-(g) (No change.)

(a)

DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH

Worker and Community Right to Know Act Rules

Readoption with Amendments: N.J.A.C. 8:59

Adopted New Rules: N.J.A.C. 8:59-11

Proposed: May 15, 1989 at 21 N.J.R. 1253(a).

Adopted: September 28, 1989, by Molly Joel Coye, M.D., M.P.H., Commissioner, State Department of Health.

Filed: September 29, 1989, as R.1989, d.543, **with substantive changes** not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3.)

Authority: N.J.S.A. 34:5A-1 et seq. specifically N.J.S.A. 34:5A-30.

Effective Date: September 29, 1989, Readoption; November 6, 1989, Amendments and New Rules.

Expiration Date: September 29, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health proposed the readoption of its Worker and Community Right to Know Act rules with amendments, N.J.A.C. 8:59, and the adoption of new rules, N.J.A.C. 8:59-11, in the New Jersey Register on May 15, 1989, 21 N.J.R. 1253(a). A public hearing was held on June 2, 1989, at which four persons testified:

Bruce Ohlendorf, Middlesex County Health Department
Andrew Fono, Royce Associates
George Thompson, The Forum for Scientific Excellence (FSE)
Susan Emmerling, The Forum for Scientific Excellence

Written comments were received from Royce Associates and The Forum for Scientific Excellence. An additional 14 written comments were submitted by the following:

Atlantic Electric
Authorities Association of New Jersey
Chemical Industry Council of New Jersey
E.I. du Pont de Nemours and Company
Flavor and Extract Manufacturers' Association of the U.S.
Fragrance Materials Association of the U.S.
GPU Nuclear Corporation
Monsanto Chemical Company
Hoffmann-La Roche
New Jersey Bell
New Jersey Right to Know and Act Coalition
New Jersey Department of Environmental Protection
Public Service Electric and Gas Company
Wilmad Glass Company, Inc.

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Department of Health.

SUBCHAPTER 1. GENERAL INFORMATION

1. COMMENT: The Forum for Scientific Excellence (FSE) proposed adding students to the definition of "employee" in N.J.A.C. 8:59-1.3. Because serious accidents involving hazardous substances occur in schools and affect students or are caused by students, the Right to Know law should protect all persons in public facilities, and providing information to students will decrease their risk of hazardous chemical illness and injury.

RESPONSE: The Right to Know law was intended to cover workers and does not mention students. Of course, any student who performs work for the school, whether on a paid or volunteer basis, which involves hazardous substances, is required to be trained. The Legislature would have to amend the law to specifically include students in order to include all students under the law.

2. COMMENT: FSE proposed deleting the phrase "in normal consumer quantities" from the consumer product exemption in the definition of "hazardous substance" in N.J.A.C. 8:59-1.3, because they felt it was confusing and indefinable.

RESPONSE: A hazardous substance present in a consumer product may not be hazardous to emergency responders if only a few product containers are present, but could create a hazard to emergency responders if present in large quantities that would be involved in a fire or explosion, such as in a warehouse or storage area. The Department does not feel that it is confusing or indefinable and will not delete it.

3. COMMENT: The New Jersey Department of Environmental Protection (DEP) supports the addition of "office of emergency management" to the definition of "designated county lead agency" in N.J.A.C. 8:59-1.3.

RESPONSE: The Department appreciates the support.

4. COMMENT: The Chemical Industry Council of New Jersey (CIC) and Hoffmann-La Roche believed that the definition of "process container" in N.J.A.C. 8:59-1.3 is too restrictive because it is limited to changing the contents of a container once per shift and CIC says that most batch operations take longer than this. They recommend changing the length of time to 30 hours.

RESPONSE: The Department believes that one shift (eight to 10 hours) is an appropriate cut-off point for the definition of "process container" since batch operations can run from one to 30 hours. Batch operations that are no longer than one shift would fall within the category of reaction vessels, which are allowed to use batch sheets and operating manuals on nearby walls or posts in lieu of a label on the process vessel itself (see N.J.A.C. 8:59-5.1(h)).

5. COMMENT: Public Service Electric and Gas Company (PSE&G) recommended the insertion of "public" to modify "employers" in the definition of "Hazardous Substance Fact Sheet" in N.J.A.C. 8:59-1.3.

RESPONSE: The Department agrees and the recommended change has been made.

6. COMMENT: GPU Nuclear Corporation (GPU) stated that the Department incorrectly included SIC 4911—Electric Services, in the explanation of the types of public employers that are covered by the Right to Know Act, and wishes a clarification on this issue.

RESPONSE: The Department recognizes that all private electric utilities are preempted by the OSHA Hazard Communication Standard for worker right to know (but not community right to know). SIC 4911 should not have been included in the listing of public employer SIC codes.

SUBCHAPTER 2. RIGHT TO KNOW SURVEY

7. COMMENT: FSE wanted this subchapter to require that product container labels should be used to determine the ingredients of products in addition to Material Safety Data Sheets, for purposes of completing the Right to Know Survey.

RESPONSE: The subchapter does not restrict the use of sources to determine the ingredients of a product in order to complete the Right to Know Survey. It is expected that public employers use container labels, letters, phone calls, and other means to determine the ingredients of products, in addition to Material Safety Data Sheets. It is not necessary to state this in the rule.

8. COMMENT: FSE recommended that a column for container age be added to the Right to Know Survey.

RESPONSE: This type of information could be very difficult to find out by an employer. In addition, as the survey form is currently designed, an additional column for this information would not fit. However, container age is important to know for certain chemicals. The Department will look into this issue further and make its recommendations in the future.

9. COMMENT: FSE requested that the six-month allowable time period for obtaining additional information about a product be retained, because some public employers utilize a MSDS file with a consultant rather than having their own. GPU also recommended retaining the six-month time period, because 90 days may not be adequate to find out product ingredients.

RESPONSE: Public employers have had several years to obtain Material Safety Data Sheets, and should be receiving them regularly with initial product shipments as a result of the OSHA Hazard Communication Standard. Any additional MSDS's that are needed to complete the 1989 Right to Know Survey (that has not yet been sent out) should be obtainable within the 90 day period allowed for filling out the survey. If the only obstacle to creating an MSDS file is obtaining copies from a consultant, the 90 day deadline can easily be met.

10. COMMENT: The Flavor and Extract Manufacturers' Association of the U.S. and the Fragrance Materials Association of the U.S. (FEMA/FMA) contended that the requirements for completing the Community Right to Know Survey and its incorporation of SARA Title III requirements exceeds statutory authority and is in violation of the New Jersey Administrative Procedure Act.

RESPONSE: The responsibility for administering the Community Right to Know Survey is with the New Jersey Department of Environmental Protection (DEP), not with the New Jersey Department of Health; therefore, these comments are more appropriately addressed to the DEP when they readopt their Right to Know rules.

11. COMMENT: Atlantic Electric commented about specific reporting requirements of individual chemicals, the number of emergency response groups that receive surveys, and threshold reporting requirements.

RESPONSE: Since Atlantic Electric is not required to submit the Right to Know Survey administered by this Department, their comments must necessarily be about the Community Right to Know Survey and, therefore, should be addressed to the DEP when they readopt their Right to Know rules.

SUBCHAPTER 3. TRADE SECRETS

12. COMMENT: FEMA/FMA claimed that the burden and expense of detailing and substantiating trade secret claims for the flavor and fragrance industry would be immense on the industry, and would overwhelm the Department's ability to process them. They proposed changes to the rules to reduce the burden.

RESPONSE: This subchapter is not being amended at this time. It cannot be amended unilaterally because it is a joint Department of Health-DEP rule. FEMA/FMA's comments will be considered when this subchapter is proposed for amendment in the near future.

SUBCHAPTER 4. HAZARDOUS SUBSTANCE FACT SHEETS

13. COMMENT: FSE suggested that a new subsection be added to set requirements for the contents of a Material Safety Data Sheet because, according to FSE, 80-90 percent of current MSDS's do not fulfill the requirements of the OSHA Hazard Communication Standard.

RESPONSE: It is unnecessary to set forth requirements for the contents of an MSDS because the OSHA Hazard Communication Standard already does so. If FSE feels that most MSDS's are inadequate, and they offer no proof to support their claim of 80 to 90 percent in violation, the solution is better enforcement of the OSHA Hazard Communication Standard.

SUBCHAPTER 5. LABELING CONTAINERS

14. COMMENT: Bruce Ohlendorf, Middlesex County Health Department, spoke in support of the universal labeling information required by the New Jersey Right to Know Act because of events that have occurred nationwide and in New Jersey, where a person in a workplace has been exposed and injured by a hazardous product and the presence of information on the product's container label has proven very useful to the hospital in treating the worker. He also advocated that manufacturers incorporate New Jersey's labeling information directly into their product label to save end-users the time and money of re-labeling.

RESPONSE: The Department agress with Mr. Ohlendorf.

15. COMMENT: Wilmad Glass Company, Inc. contended that New Jersey's labeling information requires a second label on a container which can only be accomplished in some cases by covering up important information on the original label, compounding dangers rather than aiding in protection, and that it is difficult to find enough space on small containers for both OSHA's and New Jersey's information; therefore, facilities already covered by OSHA should be excluded from coverage by the New Jersey law. Atlantic Electric also remarked about the problem which arises when the addition of New Jersey labeling information jeopardizes the manufacturer's warning label or directions of use.

RESPONSE: Important information on a label should never be covered up by the addition of a second label. However, New Jersey labeling information must still be added to the container label as required by the law. This is one of the reasons why manufacturers should incorporate New Jersey's information on its original label. The Department believes that enough space on small containers can be found to include New Jersey's chemical identity information, and, if the container is two ounces or less, an alternative labeling method can be used (see N.J.A.C. 8:59-5.1(i)). New Jersey has decided to afford greater protection to its citizens and emergency responders than the OSHA Hazard Communication Standard indirectly provides, by requiring exact chemical identification of chemical ingredients of all containers in workplaces. This is the essence of the Right to Know law and will not be changed.

16. COMMENT: Atlantic Electric remarked that since the OSHA Hazard Communication Standard does not require manufacturers to list non-hazardous substances or furnish the quality or percent composition of a product's constituents on Material Safety Data Sheets, the users of these products will need to place "Contents partially unknown" on the majority of products in the workplace. The company urged the Department to force manufacturers to provide adequate quantities of readily affixable labels to its users for containers already in the workplace, and contended that the Department will be unable to enforce the labeling provisions with in-State and out-of-State manufacturers.

RESPONSE: Since New Jersey manufacturers are required to label their containers in accordance with the New Jersey Right to Know Act, it is likely that the majority of containers entering workplaces after March 31, 1990 will be appropriately labeled. Unfortunately, many containers purchased from out-of-State companies will not be properly labeled and will need additional labeling. The Department has no jurisdiction over out-of-State manufacturers and recommends that employers use their purchasing agreements to require out-of-State companies to label containers in accordance with New Jersey labeling requirements. The Department cannot force a manufacturer to supply labels to its users; that is something that the user has to do. The State of Pennsylvania's Right to Know law labeling requirements are very similar to New Jersey's and products produced in that state may already have acceptable Right to Know container labeling.

17. COMMENT: Atlantic Electric suggested that users should not be responsible for labeling containers supplied by manufacturers with insufficient labels and revealed that it has had little success in requesting or forcing manufacturers to comply with New Jersey's labeling requirements.

RESPONSE: The Department will take enforcement action against New Jersey manufacturers who do not properly label their containers. However, the ultimate responsibility for compliance with labeling is on the covered employer in the workplace, whether it is a manufacturer or a user. A utility, being a user, is ultimately responsible for proper labeling of all its containers. Hundreds of public employers, who are also users of chemicals, have come into compliance with the law by forcing suppliers to properly label containers and by adding supplemental labels to containers. It can be done and is being done all over the State by public employers.

18. COMMENT: Atlantic Electric recommended that containers labeled in accordance with the OSHA Hazard Communication Standard which realistically convey the hazard associated with a substance, be exempt from the labeling requirements of the New Jersey Right to Know Act.

RESPONSE: Atlantic Electric is recommending that the Department remove by regulation that which is clearly required by statute. The OSHA Standard is a hazard warning law while the New Jersey Right to Know Act is a chemical identification law. One cannot be substituted for the other. The New Jersey law conveys hazard warnings through hazardous substance training of public employees in their own workplaces and of emergency responders who handle hazardous materials emergencies in private workplaces. An additional element of New Jersey's Right to Know program in conveying hazard warnings is the use and availability of Hazardous Substance Fact Sheets and Material Safety Data Sheets by public employees and emergency responders. Containers in New Jersey workplaces will now have a combination of hazard warning and chemical identification of ingredients, the best type of label in the country.

19. COMMENT: New Jersey Bell felt that two labels on a container would cause confusion and encourage employee inactivity by mischievous questions regarding accuracy of labels and the purposes behind two labels. Atlantic Electric also remarked that dual labeling on a single container is confusing to workers, the community and emergency response personnel.

RESPONSE: The issue of employee confusion from the addition of New Jersey labeling was raised by the plaintiffs in *New Jersey Chamber of Commerce v. Hughey* Civil Action Nos. 84-3255 and 84-3892, (D.N.J. February 5, 1988). The United States District Court, after hearing all the evidence, found that worker confusion "is most unlikely to occur and that the OSHA labeling requirements can co-exist with the Section 14(a) and (b) labeling requirements of the N.J. Act without serious risk of one system obstructing or interfering with the other." The court said that "The OSHA label can be distinguished from all other labels by proper formatting and positioning . . . . Formatting and positioning and training, all of which are within the contemplation of the OSHA system, will ensure that implementation of New Jersey's environmental and universal label-

ing requirements will not stand as an obstacle to the accomplishment of the purposes of the federal standard." (Unpublished opinion, February 5, 1988, pages 30-31.) The Department encourages employee questions about chemicals within containers and the purposes of the Hazard Communication and Right to Know labels, and encourages New Jersey Bell to address such questions in their employee training sessions.

20. COMMENT: FEMA/FMA claimed that it would be arbitrary and contrary to the Right to Know law to require employers to label containers with the DOT generic names (for example, flammable liquid, n.o.s.) that are being added to the Right to Know Hazardous Substance List (RTKHSL).

RESPONSE: For generic categories, in most cases generic names cannot be used on container labels. Generic chemical names from the DOT list are being added to the RTKHSL primarily for the purpose of reporting substances on the Right to Know Surveys and Community Right to Know Surveys which are not individually listed. Generic names (that is, those designated as "gen" on the RTKHSL) will only be allowed on container labels for the 33 generic categories that have a CAS number next to the generic name on the List. The only exception to this rule will be the allowable use of "Fuel Oil" for labeling heating oil and diesel fuel, and use of "Petroleum Oil" for labeling motor oil and transmission fluid. This is being clarified by the addition of a sentence to N.J.A.C. 8:59-5.7(b).

21. COMMENT: FEMA/FMA contended that the requirements to label non-hazardous substances and hazardous substances are arbitrary and unconstitutional. Atlantic Electric claimed that the universal labeling requirement of the Right to Know law was extremely impractical, unnecessary, burdensome, redundant, and distorts the hazard warning intent of the label.

RESPONSE: These arguments were addressed by the decision of the United States Supreme Court on July 3, 1989 not to consider the appeal of the plaintiffs (which included FEMA/FMA) in the case of *New Jersey Chamber of Commerce v. Hughey,* 868 F.2d 621 (3rd Cir. 1989), cert. den. _U.S._, 57 U.S.L.W. 3859 (July 3, 1989). This decision upheld the decisions of the United States Third Circuit Court of Appeals and United States District Court which held that the universal labeling provisions of the New Jersey Worker and Community Right to Know Act are not pre-empted by the Occupational Safety and Health Act in the private sector. The Third Circuit and District Courts held that formatting, positioning and training will ensure that implementation of New Jersey's labeling requirements will not stand as an obstacle to the accomplishment of the hazard warning purposes of the OSHA Hazard Communication Standard.

22. COMMENT: FEMA/FMA requested an exemption for labeling for all laboratories, not just research and development (R & D) laboratories, because they claim chemicals are generally present in small quantities and for short periods of time in non-R & D laboratories.

RESPONSE: The law only allows for exemptions for R & D laboratories. Non-R & D laboratories generally have a smaller number of chemicals that are present in larger quantities than R & D labs. For containers holding two ounces or smaller, an alternative labeling scheme can be used (see N.J.A.C. 8:59-5.1(i)). In addition, many laboratory chemicals are properly labeled by laboratory supply companies so that there is no additional burden on the receiving laboratory to label that container.

23. COMMENT: FEMA/FMA argued that the labeling requirements should be waived for employers who get local fire officials to certify that they have been provided with the emergency response information they need, as DEP has done.

RESPONSE: The DEP's waiver for its Emergency Services Information Survey no longer applies, since this survey has been incorporated into the Community Right to Know Survey and no waiver is permitted for that survey. The professional fire service does not support the granting of waivers to the requirements of the Right to Know Act. The Fire Safety Commission recommended in early 1985 that fire departments should not sign off on a local industry's application for a waiver. In addition, large companies in small towns may be in a position to exert influence on volunteer fire companies dependent on contributions. The Department does not believe a waiver is in the best interests of firefighters or the residents of the town.

24. COMMENT: FEMA/FMA claimed that the requirement in N.J.A.C. 8:59-5.1(b) to include the phrase "Contents Unknown" on labels in certain circumstances no longer serves any useful purpose and should be deleted.

RESPONSE: The phrase "Contents Unknown" is still needed on New Jersey Right to Know Act labels because some out-of-State manufacturers will not supply New Jersey employers with all the required ingredient information for all containers, and some New Jersey employers will not comply with the law and provide all of the necessary information on their container labels for products sold to other New Jersey employers.

25. COMMENT: FSE suggested an amendment to N.J.A.C. 8:59-5.1(c) to require the inclusion of hazard warnings and required personal protective equipment (PPE) on container labels because it provides immediate access to critical information.

RESPONSE: The New Jersey Right to Know Act is a chemical identification law and specifically requires the chemical identity of ingredients on container labels. The law does not require hazard warnings or PPE on labels. OSHA already requires hazard warnings on containers in the workplace which provide the information requested by FSE.

26. COMMENT: PSE&G recommended adding the words "on the New Jersey Right to Know Hazardous Substance List and Special Health Hazard Substance List, N.J.A.C. 8:59, Appendix A and Appendix B" after "number of all hazardous substances" in N.J.A.C. 8:59-5.1(c).

RESPONSE: The addition of this phrase would lengthen this sentence to the point where it would be hard to understand. All covered employers should read the definition of "hazardous substance" in N.J.A.C. 8:59-1.3 in order to find out which hazardous substances are covered by the New Jersey Right to Know Act. In fact, the only hazardous substances covered by the New Jersey Right to Know Act are those listed on the Right to Know Hazardous Substance List. This is particularly important for purposes of reporting on the Right to Know Survey and training employees, for public employers. Private employers who report on the Community Right to Know Survey must list all hazardous substances which meet the criteria of SARA-Title III, which is adopted from the OSHA Hazard Communication Standard, a much larger list than the Right to Know Hazardous Substance List.

27. COMMENT: PSE&G did not feel that an emergency responder would be able to derive any helpful information from a Chemical Abstracts Service (CAS) number on a label in an emergency, which is required by N.J.A.C. 8:59-5.1(c).

RESPONSE: While an emergency fire situation is not the ideal time for obtaining information on any container, it still can be useful. CAS numbers can be utilized very effectively in cases of spills and pre-fire planning where the emergency responder would have sufficient time to access either print or computer databases to find out the hazards of that chemical. A CAS number identifies an exact chemical and makes it possible to find out the hazards of that particular chemical, rather than being confronted with a chemical name that encompasses an entire class of chemicals which may have different hazards.

28. COMMENT: FEMA/FMA contended that, contrary to the requirement in N.J.A.C. 8:59-5.1(c) for the labeling of all hazardous substances, the court decision about the Right to Know Act, *New Jersey Chamber of Commerce v. Hughey,* 868 F.2d 621 (3rd Cir. 1989), only requires private employers to label environmental hazardous substances and the five most predominant substances in mixtures.

RESPONSE: This is an incorrect interpretation of the court decision. The universal labeling requirement of the Act in N.J.S.A. 34:5A-14(b) requires the labeling of **all** single substance containers, regardless of whether the substance is hazardous or non-hazardous, as well as labeling the five most predominant substances in mixtures. For mixtures, the court decision requires hazardous substance labeling by **private employers** as follows: If a mixture has more than five ingredients, the additional ingredients must be included on the label if they are listed on the Environmental Hazardous Substance List. These chemicals are designated as Source #6 on the Right to Know Hazardous Substance List. This has been clarified in N.J.A.C. 8:59-11.6(c). For **public employers,** if a mixture has more than five ingredients, the additional ingredients must be included on the label if they are listed on the Right to Know Hazardous Substance List.

29. COMMENT: There has been some question about what the phrase "labeling required by or consistent with (USDOT) requirements" in N.J.A.C. 8:59-5.1(d) means, when it is compared with N.J.A.C. 8:59-5.5(b) which only allows the use of USDOT names of specific chemicals with DOT ID numbers which are identical to names on the Right to Know Hazardous Substance List.

RESPONSE: The intent of N.J.A.C. 8:59-5.1(d) was to minimize additional labeling in warehouses, storage and transfer facilities when the containers would not be opened. N.J.A.C. 8:59-5.1(d) only applies to shipping containers in warehouses, storage and transfer facilities on which DOT labeling is required or which has a label which is consistent with DOT labeling. N.J.A.C. 8:59-5.5(b) applies to the primary use containers in the employer's facility.

30. COMMENT: The New Jersey Right to Know and Act Coalition (RTK Coalition) stated that the language in N.J.A.C. 8:59-5.1(d) concerning when employers must label containers after they arrive at a facility is confusing and needs clarification, and propose adding the sentence "No employer may use the contents of a container unless the container is appropriately labeled."

RESPONSE: N.J.A.C. 8:59-5.1(d) requires the labeling of containers before employees open them, and, if the container is not going to be opened for some time, within five working days of the container's arrival at the facility. The intent of this subsection is that no container can stay improperly labeled longer than five working days in the workplace, and all containers must be properly labeled at the time of opening by an employee. Since the intent of the subsection is to prohibit employers from using improperly labeled containers to protect both employees and emergency responders, the proposed sentence has been added.

31. COMMENT: The RTK Coalition felt that giving employers 30 days to label containers once an employer has received information about the contents of the containers in N.J.A.C. 8:59-5.1(g) was much too long a period of time and should be reduced to three days or less. GPU Nuclear felt that 30 days was too short and recommended a time period of 45 to 60 days.

RESPONSE: The Department recognizes that N.J.A.C. 8:59-5.1(g) is not in agreement with N.J.A.C. 8:59-5.1(d) which it should be since they are so similar, and has changed the allowable time period for labeling in N.J.A.C. 8:59-5.1(g) to five working days so that they allow the same time for new labels to be affixed upon the receipt of new containers or new information about old containers.

32. COMMENT: Atlantic Electric praised the Department for clarifying the labeling requirements for containers two ounces or smaller (N.J.A.C. 8:59-5.1(i)), containers delivered on a skid (N.J.A.C. 8:59-5.1(m)), and containers that are packed within properly labeled larger containers (N.J.A.C. 8:59-5.1(n)).

RESPONSE: The Department appreciates the support.

33. COMMENT: PSE&G and Atlantic Electric remarked that a shrink-wrapped skid should be labeled on the outside of the shrink-wrap, not the inside, as specified in N.J.A.C. 8:59-5.1(m), and PSE&G recommended deleting the sentences allowing shrink-wrap labeling and requiring labeling of unlabeled containers taken off the skid.

RESPONSE: The Department agrees with PSE&G and Atlantic Electric about labeling shrink-wrap on the outside and has changed the subsection accordingly. The labeling of unlabeled containers is a requirement of the law and will be retained.

34. COMMENT: FSE requested that N.J.A.C. 8:59-5.1(n) be amended to require that all small containers in a large container be labeled when the large container is initially opened instead of when they are removed from the container.

RESPONSE: The Department feels that an employer's workload would be reduced by allowing labeling when a small container is removed from a large container without losing any of the benefits of the Right to Know Act because the larger container would be labeled and provide any necessary information, and sees no need to change this proposed amendment.

35. COMMENT: FEMA/FMA argued to retain N.J.A.C. 8:59-5.4(b) which allowed DOT and National Fire Protection Association substances to be labeled only if they were among the five most predominant substances, in certain circumstances.

RESPONSE: The Department still feels that the language in this subsection is confusing and not understandable to the average person, and it has been deleted.

36. COMMENT: PSE&G recommended that a labeling exception be added for waste material labeling requirements of the New Jersey Solid Waste Management Act in addition to Resource Conservation and Recovery Act labeling, in N.J.A.C. 8:59-5.5(c).

RESPONSE: The Department agrees with this suggestion and has added the New Jersey Solid Waste Management Act to N.J.A.C. 8:59-5.5(c).

37. COMMENT: PSE&G suggested that information required by SARA-Title III be allowed on container labels in lieu of New Jersey Right to Know required information, and that the exclusions under SARA-Title III be adopted for New Jersey container labeling because they were adopted by EPA with the emergency responder in mind, in N.J.A.C. 8:59-5.5 and N.J.A.C. 8:59-5.6.

RESPONSE: The New Jersey Right to Know Act provides more specific chemical identification information on containers than SARA-Title III requires on its surveys, which is to the benefit of emergency responders. New Jersey also standardizes chemical names so that an emergency responder will come across one or two names for the same chemical, rather than the dozens of synonyms that would be possible under SARA-Title III reporting. The New Jersey Right to Know Act does not contain as many exclusions as SARA-Title III because it is more protective of its emergency responders and citizens.

38. COMMENT: PSE&G proposed that National Fire Protection Association (NFPA) labeling be allowed to satisfy the requirements of New Jersey Right to Know Act labeling because emergency responders are already familiar with NFPA labels.

RESPONSE: NFPA labeling indicates the hazard of the contents of a container. The New Jersey Right to Know Act is a chemical identification law, not a hazard communication law, therefore NFPA labels cannot substitute for New Jersey labels. Hazard communication information should already be included on labels pursuant to the OSHA Hazard Communication Standard. New Jersey labeling information will add important information to the existing OSHA label by revealing the exact chemical ingredients of the product.

39. COMMENT: PSE&G proposed that labeling should be excluded from piping under two inches in diameter operating at less than 100 pounds per square inch pressure.

RESPONSE: The New Jersey Right to Know Act requires the labeling of all pipeline valves, outlets, vents, drains and sample connections, regardless of the size of the pipeline or amount of pressure within the pipeline. Emergency responders and public employees should know the ingredients of all pipelines in order to protect themselves and perform their required functions. No reason was provided for excluding this particular category of pipeline.

40. COMMENT: PSE&G suggested incorporating the definition of "article" in N.J.A.C. 8:59-5.6(a)1 as is found in the OSHA Hazard Communication Standard.

RESPONSE: The OSHA Hazard Communication Standard definition of "article" is already included in the rules, in the definition section, N.J.A.C. 8:59-1.3.

41. COMMENT: PSE&G recommended adding the phrase "present in a liquid or solid form" to N.J.A.C. 8:59-5.6(a)1 which exempts New Jersey Right to Know labeling from solid articles.

RESPONSE: The New Jersey Right to Know Act specifically states that only articles containing solid hazardous substances are exempt from the requirements of New Jersey labeling.

42. COMMENT: PSE&G suggested rewording the new N.J.A.C. 8:59-5.6(a)5 to exempt from the requirements of labeling, "Any fuel contained in equipment which is used to power that equipment."

RESPONSE: The phrasing suggested by PSE&G is too broad and would cover instances when fuel in equipment should be labeled with New Jersey labeling information; therefore, the subsection remains limited to fuel in motor vehicles.

43. COMMENT: CIC and Hoffmann-La Roche remarked that substances constituting less than one percent of a mixture should be excluded from the requirement to list them on container labels and recommended deleting or increasing the provision that they must be included if present in the amount of 500 pounds or more in a container (see N.J.A.C. 8:59-5.6(a)2).

RESPONSE: The provision comes from the statute and indicates an intent by the Legislature to include substances measuring less than one percent in a mixture in certain circumstances. The Department has already clarified this provision by limiting its applicability to a single container rather than allowing one pound of the substance to be present in 500 containers throughout the facility. As it now stands, this inclusion would only apply to containers which are approximately 5,000 gallons or larger. No change has been made.

44. COMMENT: FEMA/FMA proposed that the consumer product exemption in N.J.A.C. 8:59-5.6(a)4 be retained without amendment because exposure is more important than quantity.

RESPONSE: A hazardous substance present in a consumer product may not be hazardous to emergency responders if only a few product containers are present, but could create a hazard to emergency responders if present in large quantities that would be involved in a fire or explosion, such as in a warehouse or storage area. While exposure is important, in this situation, quantity is also important.

45. COMMENT: CIC and Hoffmann-La Roche felt that there was no reason for any labeling on pipelines and recommended the allowance of process flow diagrams and batch sheets instead, by amending N.J.A.C. 8:59-5.6(b) and N.J.A.C. 8:59-5.2. Hoffmann-La Roche further remarked that due to the batch operations nature of their industry, they will face enormous problems in complying with the pipeline labeling requirements.

RESPONSE: CIC and Hoffmann-La Roche wish to remove by regulation that which is clearly required by statute. Only the Legislature can change this provision. It should be noted that pipelines themselves are not required to be labeled. Only valves which allow a substance to enter a facility's pipeline system and normally operated valves, outlets, vents, drains and sample connections which would allow the release of a substance from the pipeline need to be labeled. The theory behind this is that a person could be exposed to a hazardous substance at the points where the substance can flow out of the pipeline. While there will be costs associated with labeling, the safety of the community and emergency responders is paramount.

46. COMMENT: FSE stated that synonyms should not be allowed to be used on labels as permitted by N.J.A.C. 8:59-5.7(b) because there are over 40,000 synonyms for substances on the Right to Know Hazardous Substance List (RTKHSL) and they will not specifically identify a Hazardous Substance Fact Sheet for an employee.

RESPONSE: There may be some misunderstanding here. Only the 700+ synonyms listed on the RTKHSL are allowed to be used on container labels. If an unaccepted synonym is used, it must be replaced (or supplemented) by an accepted synonym or chemical name. All RTKHSL synonyms are cross-referenced to the chemical name, so an employee will be able to identify the appropriate Hazardous Substance Fact Sheet.

47. COMMENT: The Authorities Association of New Jersey objected to the new requirement in N.J.A.C. 8:59-5.10 which holds a public employer liable for proper labeling of containers brought into their facilities by private subcontractors, because it would increase the liability of public agencies.

RESPONSE: Since subcontractors do not fall within the Standard Industrial Classification (SIC) codes covered by the Right to Know Act, the Department cannot require them to label their container in accordance with the Act. The public employer, on the other hand, is required to label all of its containers at its facility, for the protection of its employees, citizens and emergency responders. Total protection would not be afforded to these groups if there were some containers at the public facility without proper labels. The Department feels that it is the responsibility of a public employer to keep track of and label properly all containers at their facilities. The public employer can require the subcontractor to label its own containers through bidding specifications, in the same manner that many public employers and the State require Right to Know labeling for all products purchased by them.

48. COMMENT: GPU Nuclear inquired whether containers stored at an employer's facility by a subcontractor which must now be properly labeled pursuant to N.J.A.C. 8:59-5.10, applies to the private sector.

RESPONSE: The intent of N.J.A.C. 8:59-5.10 is to make sure that all containers at a facility are properly labeled. The subsection currently only refers to public facilities. Since it would be to the benefit of emergency responders to find all containers properly labeled at a private facility, a proposal will be submitted in the future to also require private employers to ensure proper labeling of containers brought into their facilities by subcontractors.

SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM

49. COMMENT: FSE proposed adding "students" to N.J.A.C. 8:59-6.1(a) in accordance with their earlier suggestion to add "students" to the definition of "employee".

RESPONSE: The Right to Know law was intended to cover workers and does not mention students. Of course, any student that performs work for the school, whether on a paid or volunteer basis, which involves hazardous substances, is required to be trained. The training of volunteer students is a new amendment to these rules. The Legislature would have to amend the law to specifically include students in order to train all students about hazardous substances.

50. COMMENT: Some concerns were raised about the stringency of requiring annual training within 12 months of initial or the prior year's annual training program, as required by N.J.A.C. 8:59-6.2(a).

RESPONSE: In order to accommodate public employers who feel this provision is too stringent, the 12 month restriction will be deleted.

51. COMMENT: Now that volunteer firefighters and other volunteers are required to receive Right to Know training, a deadline needs to be set for completion of the training.

RESPONSE: N.J.A.C. 8:59-6.2(a) will be amended to set a deadline of March 6, 1990 for the training of firefighters. This deadline is identical to the deadline for the training of emergency responders pursuant to the United States Environmental Protection Agency's (EPA) Rule on Worker Protection for Hazardous Waste Operations and Emergency Response, 54 Fed. Reg. 26654, June 23, 1989, and the identical OSHA rule published on March 6, 1989 at 54 Fed. Reg. 9294 which will soon be adopted by New Jersey pursuant to the New Jersey Public Employees Occupational Safety and Health Act. A deadline of October 1, 1990 will be set for all other volunteers in order to give public employers a year to provide them with training.

52. COMMENT: The RTK Coalition supported the amendments to N.J.A.C. 8:59-6.3(c) which clarified the obligation of public employers with hazardous substances at their facilities to distribute the Right to Know brochure to all employees at those facilities.

RESPONSE: The word "public" was inadvertently left out of N.J.A.C. 8:59-6.3(c) and will be added to modify "employer".

53. COMMENT: FSE wanted new N.J.A.C. 8:59-6.3(f), which allows abbreviated Right to Know training for employees who are only exposed to toner or developer for a copying machine or gasoline for a motor vehicle, deleted because it opens the door for other abbreviated training programs and would be impossible to enforce.

RESPONSE: The Department disagrees with FSE and feels that training about single substance minor exposures that are common to many employees such as copier toner and developer and gasoline can be handled in a manner that does not require a three to six hour training program but still provides appropriate training to employees. There is nothing about this provision that would make it hard to enforce.

SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

54. COMMENT: Bruce Ohlendorf of the Middlesex County Health Department recommended that county emergency management staff coordinate their activities with Right to Know County Lead Agents in regard to SARA-Title III compliance because the county lead agents have been very involved with Local Emergency Planning Committees and with Environmental Commissions in helping them meet their responsibilities under SARA-Title III.

RESPONSE: The Department agrees that it is important and desirable for county offices of emergency management which deal with hazardous materials incidents, and Right to Know County Lead Agencies which possess data on the existence of hazardous substances in facilities throughout the county, to work more closely together. This will serve to improve emergency response capability within the county.

55. COMMENT: FSE recommended the addition of a new subsection to require public school districts to submit a Right to Know compliance status report every year to their parent teacher associations.

RESPONSE: While such a report would undoubtedly be of interest to the parent teacher association because of their concern about hazardous substances in the schools that their children attend, the New Jersey Right to Know Act does not give the Department the authority to establish such a requirement.

56. COMMENT: The RTK Coalition found N.J.A.C. 8:59-7.5(b), which allows an employee to refuse to work with a hazardous substance under certain circumstances, confusing because an employee would not know whether a substance is hazardous if it is not labeled, and requested clarification of this provision.

RESPONSE: Since a public employee has the right not to work with a hazardous substance in an unlabeled or improperly labeled container in certain circumstances, and the employee would not know whether the unlabeled or improperly labeled substance in the container is hazardous or not, in effect the employee has the right not to work with any substance which is unlabeled or improperly labeled, whether it is hazardous or not. N.J.A.C. 8:59-7.5(b) has been amended in order to clarify this. The fact that N.J.A.C. 8:59-7.5 only applies to public employees has also been clarified.

SUBCHAPTER 8. ENFORCEMENT

57. COMMENT: FSE requested amendment of N.J.A.C. 8:59-8.2(b)1ii(17) to allow the name, address and telephone number of a consultant maintaining Material Safety Data Sheets (MSDSs) for an employer in the central file instead of having the MSDSs in the central file.

RESPONSE: While some consultants keep MSDSs for a public employer rather than providing the employer with copies, the Department does not recommend this method, because, if that consultant is not retained in a future year, the employer loses all of the MSDSs which it paid the consultant to obtain. The Department is now requiring all public employers to maintain their own MSDSs because MSDSs are important sources of information about the hazards of mixtures and it ensures that employers will always have the MSDSs in their central files.

58. COMMENT: FSE recommended adding a new violation for failure of a public school district to provide a compliance inspection report to the parent teacher association.

RESPONSE: As mentioned previously, the Department does not have the authority to require this and therefore cannot consider failure to do this a violation of the Right to Know law.

59. COMMENT: FSE advocated adding a new subsection which would establish automatic, non-negotiable fines of $1,000 per day for failure to return the Right to Know Survey, label 95 per cent of containers within 60 days of inspection, or complete the Right to Know education and training program, within certain time periods, because they claimed that the absence of adequate enforcement has created wide discrepancies in the level of compliance.

RESPONSE: There are too many variables involved in complying with the Right to Know law to institute automatic, non-negotiable fines. For example, a public employer may have neglected to file a survey for the Board of Education office which is located in the high school for which a survey was filed. This error can be easily corrected by the filing of a survey reflecting no hazardous substances for an office. It does not warrant a $1,000 penalty. Ninety-five per cent of containers may not be labeled within the number of days allowed after an inspection for compliance because the public employer may have had to go through various legal procedures for retaining a consultant during this period, or labeling may be completed a few days late. Neither of these situations warrants a penalty. The Department looks at each violation on an individual basis and evaluates whether the violator is making a good faith effort to correct its violations. When necessary, the Department has assessed penalties for non-compliance, and will continue to do so as the occasion warrants.

60. COMMENT: Since the deadlines for labeling have passed, they have been eliminated from N.J.A.C. 8:59-5. References to the deadlines still exist in N.J.A.C. 8:59-8.2(b)1ii(8) and (9).

RESPONSE: The references to the deadlines have been deleted.

61. COMMENT: GPU Nuclear disagreed that failure to label 95 per cent of containers should constitute a major violation of the Right to Know law as set forth in N.J.A.C. 8:59-8.2(b)1ii(8), (9) and (10), and contended that a facility should be deemed to be in compliance if only five per cent of containers are found to be improperly labeled. They suggested that a major violation of the Right to Know law should be re-defined as failure to label at least 75 percent of containers in the facility.

RESPONSE: Labeling is a critical requirement of the New Jersey Right to Know Act and its violation is considered by the Department to be a major violation subject to significant penalties. The Department will continue to consider it a major violation if more than five per cent of containers are not properly labeled. Employers are expected to be in total compliance with the law, not partial compliance.

62. COMMENT: FEMA/FMA proposed that a new subsection be added to N.J.A.C. 8:59-8.9 to provide trade secret protection for records, photographs and other information taken or obtained during an inspection which might reveal a trade secret.

RESPONSE: Since the law requires that trade secret rules be jointly adopted by the Department of Health and Department of Environmental Protection (DEP), and protection for trade secrets obtained during an inspection would apply to both departments, the Department will consider this proposal when it jointly revises N.J.A.C. 8:59-3 with DEP.

SUBCHAPTER 9. RIGHT TO KNOW HAZARDOUS SUBSTANCE LIST

63. COMMENT: FSE argued that the requirement to revise the Right to Know Hazardous Substance List (RTKHSL) annually in N.J.A.C. 8:59-9.3(a) should be retained because the frequency of hazardous substance updates, additions and revisions warrant an annual revision. Atlantic Electric contended that the Department has an obligation to provide revised Lists to employers in advance of receipt of the annual surveys and opposed revision of the List on an "as needed" basis. GPU Nuclear supported annual revisions of the List.

RESPONSE: The "annual" requirement was always conditioned upon an "if necessary" basis. The Department anticipates being able to make necessary revisions to the List at least every three years and has substituted this time period for the annual time period. It would be a burden on public employers to have to replace the RTKHSL in their central file every year, and on private employers to have to obtain a new list every year in order to keep up-to-date on labeling requirements, not to mention the financial burden on the Department to publish tens of thousands of lists every year. The DEP sends a complete RTKHSL to every covered private employer in the booklet containing the Community Right to Know Survey.

64. COMMENT: FEMA/FMA objected to N.J.A.C. 8:59-9.3(b), which allows automatic revision to the RTKHSL to reflect changes in 15 of the reference source chemical lists which have been incorporated into the RTKHSL, because it would improperly delegate authority and is not in accordance with the New Jersey Administrative Procedure Act. The RTK Coalition supported the amendment which would automatically revise the RTKHSL. GPU Nuclear opposed automatic revision to the List.

RESPONSE: The lists whose changes will be automatically incorporated by reference include five Federal agencies; the New Jersey DEP; a well-respected private organization, the American Conference of Governmental Industrial Hygienists (ACGIH), whose list of hazardous chemicals has been adopted by OSHA; and a United Nations organization, The International Agency for Research on Cancer, whose determinations on carcinogenicity are accepted by governments throughout the world. The adoption of existing lists of other agencies and organizations is in accordance with the intent of the New Jersey legislature which adopted the OSHA list and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) list in toto in the Right to Know Act. The Department's proposal is a proper delegation of authority and saves State resources.

This automatic revision to an adopted list is no different than DEP's automatic adoption of revisions to the DOT's Hazardous Materials Table in N.J.A.C. 7:1G-4.2(b). Similar to DEP's rule, notice of revisions to these 15 lists will be published in the New Jersey Register as a public notice. Other changes to the RTKHSL will be published in the New Jersey Register as a proposed rule amendment, in accordance with the Administrative Procedure Act. Even though ACGIH is a private organization, OSHA has set supportable legal precedent in determining the hazards of chemicals by adopting the entire ACGIH list of hazardous chemicals and their threshold limit values. FEMA/FMA retains its right of public comment under the Administrative Procedure Act by being able to object to any of the 15 lists being included in the provision for automatic inclusion of revisions. They have only felt it necessary to object to one of the lists, DOT, and for reasons that evidenced a misunderstanding of the purpose of including the DOT hazardous substances and materials on the RTKHSL, not for the reason that the DOT substances and generic categories were not truly hazardous.

65. COMMENT: The DEP wished to participate in reviewing and recommending changes to the RTKHSL because they use the List as a reporting guide for private sector employers who must complete the Community Right to Know Survey, and recommended the development of a memorandum of understanding to allow joint participation in all future changes to the List.

RESPONSE: The DEP has always been included in all reviews of the RTKHSL. Joint meetings between the two departments have taken place over the past several years to discuss revisions to the List, and all proposed changes to the List are always submitted by the Department to DEP for their comments. The Department has always considered changes proposed by DEP to the List and will continue to facilitate and encourage the participation of DEP in all future changes to the List. The Department does not agree that a memorandum of understanding is necessary at this time. There is no need to include DEP in the Department of Health's rules because DEP has its own independent authority to adopt the RTKHSL in its own rules.

66. COMMENT: FSE suggested that the revised RTKHSL be sent to all public employers with the 1989 Right to Know Survey, otherwise many employers may use an obsolete list in filling out the survey form.

RESPONSE: The Department is planning to mail a revised RTKHSL to every public employer facility for inclusion in their Right to Know central file to substitute for the old List and to be used to complete the 1989 Right to Know Survey. Private employers receive a copy of the RTKHSL in their annual Community Right to Know Survey booklet from the Department of Environmental Protection.

67. COMMENT: FEMA/FMA claimed that the addition of U.S. Department of Transportation (DOT) substances to the RTKHSL was arbitrary and in violation of the Right to Know Act because they are not all individual substances and do not all have Chemical Abstracts Service (CAS) numbers and that the DOT substances do not constitute a scientifically documented health or safety threat to an employee.

RESPONSE: The Department disagrees. One of the DOT lists, 49 CFR Part 172.102, has been a part of the RTKHSL since its creation in 1984. The Department has the authority to rely on another agency's list of hazardous substances, to consider it to be documented scientific evidence, and to incorporate it into its own list of hazardous substances. Even though DOT may have its own criteria for placing substances and generic

categories of chemicals on its lists, it must be remembered that the employees covered by the New Jersey Right to Know Act not only consist of workers in public facilities, but also include emergency responders, such as firefighters and police officers, who could possibly encounter any of the substances on the DOT's Hazardous Materials Tables, so that DOT's criteria are applicable to New Jersey public employees.

68. COMMENT: FEMA/FMA commented that it is unworkable and confusing to be expected to label containers using the generic DOT categories such as "cosmetics, flammable, n.o.s.". Atlantic Electric commented favorably on the inclusion of generics on the RTKHSL and alluded to their use on labels.

RESPONSE: The generic categories from the DOT list are only to be used for one specific purpose, to report substances on the Right to Know Survey and Community Right to Know Survey which are not individually listed on the RTKHSL. The generic categories, other than "Fuel Oil" and "Petroleum Oil", cannot be used on labels, except for the 33 generic categories that have CAS numbers, such as "Gasoline". "Fuel Oil" can be used to label heating oil and diesel fuel, and "Petroleum Oil" can be used to label motor oil and transmission fluid. This is an important point that needs to be reiterated because there appeared to be some misunderstanding among more than one commenter. The intention of the New Jersey Right to Know Act is to identify chemical ingredients by their exact chemical names. Therefore, the law does not allow the use of broad generic categories, such as "solvents", on container labels. The solvents in a product must be listed on the label by chemical name and, if all ingredients are not known, the phrase "Contents Partially Unknown" must be added.

69. COMMENT: FEMA/FMA commented that the Department had arbitrarily failed to include qualifications on the hazards of substances adopted from the lists of other agencies, such as the Environmental Protection Agency's list of Extremely Hazardous Substances, which contain threshold planning quantities.

RESPONSE: The Department has not adopted these qualifications because they set a threshold limit, below which the substances would not be considered hazardous and therefore would not be reported or labeled. The New Jersey Right to Know Act does not contain a threshold limit, so that a recognized hazardous substance is reportable at any level, as well as required to be labeled.

70. COMMENT: Du Pont and Atlantic Electric suggested that the Department develop a list of any future additions, deletions and modifications to the RTKHSL, because it would greatly assist those subject to the Right to Know law by quickly identifying only the proposed changes from the previous list and would facilitate compliance by eliminating time-consuming cross-referencing.

RESPONSE: Future changes to the RTKHSL will be listed in the New Jersey Register as a public notice or a proposed amendment to the rule, in accordance with N.J.A.C. 8:59-9.3(f), as a separate list of changes. It was not feasible to publish a separate list with the current changes because of the large number of changes that needed to be made. Even so, the Department has attempted to indicate all of the changes being made to the RTKHSL by its explanation in the Summary text of the preproposal of Appendix A and Appendix B (the RTKHSL) at 21 N.J.R. 1194(a), and by the use of the symbols "chg", "+", and "¶" in the complete List. "Chg" in the first column indicates a change to the chemical name, CAS number or DOT number; "+" to the left of the common name indicates an addition to the Special Health Hazard Substance List (SHHSL); and "¶" to the left of the common name indicates a deletion from the SHHSL. To further enable a company to compare the old and new lists, the new list is available from the Department on diskette for $25.00, which will enable companies to compare the lists on their computer systems in any manner they wish.

71. COMMENT: Atlantic Electric commended the Department for attempting to minimize the confusion associated with a multitude of state hazardous substance lists by consolidating the Workplace, Environmental, and Special Health Hazard Substance Lists into one comprehensive Right to Know Hazardous Substance List.

RESPONSE: That was the exact intent of consolidating the lists and the Department hopes that all employers find it easier to comply with the Right to Know law by using the consolidated Right to Know Hazardous Substance List.

72. COMMENT: Atlantic Electric applauded the Department for including several hundred commonly recognized synonyms on the RTKHSL and allowing their use on container labels.

RESPONSE: The Department wants to make it clear that only the synonyms listed on the RTKHSL may be used on labels, if an employer does not wish to use the chemical or common name listed on the RTKHSL. No other synonyms may be used.

73. COMMENT: Atlantic Electric proposed that the RTKHSL be revised to reflect the quantities of each substance that are hazardous as EPA had done.

RESPONSE: Under the New Jersey Right to Know Act, there is no minimum quantity for reporting hazardous substances and, therefore, the requested revision cannot be made.

74. COMMENT: Monsanto Chemical Company, manufacturer of butyl benzyl phthalate (BBP), claimed that BBP was not hazardous and therefore should not be added to the RTKHSL. Royce Associates testified and submitted written comments saying that pure metal zinc is not hazardous and that the listing for zinc on the RTKHSL was incorrect and should be changed.

RESPONSE: These are comments recommending changes to specific chemical listings on N.J.A.C. 8:59, Appendix A—Right to Know Hazardous Substance List. These comments have been addressed in the proposal for repeal and readoption of N.J.A.C. 8:59, Appendix A (Right to Know Hazardous Substance List) and Appendix B (Special Health Hazard Substance List), which will appear soon in the New Jersey Register.

75. COMMENT: GPU Nuclear suggested that all synonyms on the RTKHSL have CAS numbers listed next to them to realize the benefit of cross-referencing.

RESPONSE: In order for the synonym listing to be able to be used without reference to the original chemical name listing, all of the information about that chemical (for example, substance number, CAS number, DOT number, SHH codes, and Source numbers) would have to be listed with the synonym. This would unduly lengthen the List and make it more difficult to identify the synonyms.

SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST

76. COMMENT: FEMA/FMA contended that the Special Health Hazard Substance List (SHHSL) was overinclusive and exceeded the statutory authority for including substances on the SHHSL, which in turn restricts the scope of trade secret protection provided by the law. Specifically, they contended that the New Jersey Right to Know Act only allows known human carcinogens and teratogens to be included on the SHHSL, and should not include certain carcinogens listed by IARC, the National Toxicology Program (NTP), the EPA Carcinogen Assessment Group (CAG), and the National Institute for Occupational Safety and Health study on Benzidine-Based Dyes.

RESPONSE: This is an incorrect, narrow interpretation of the Right to Know law. The law covers "hazardous substances which, because of their known carcinogenicity, mutagenicity, (or) teratogenicity . . . pose a special hazard to health and safety" (N.J.S.A. 34:5A-5(b)). If the Legislature intended to restrict the list to the small number of known human carcinogens and teratogens, it would have said so. The Department interprets this paragraph, in N.J.A.C. 8:59-10.1(a), to include "known carcinogenicity, mutagenicity or teratogenicity in humans, animals, or in vitro tests". As set forth more fully in N.J.A.C. 8:59-10.2, the Department considers "known carcinogens" to include chemicals with sufficient evidence from human epidemiological studies to support a causal association between the exposure and human cancer, chemicals for which there is sufficient evidence of carcinogenicity in experimental animals, chemicals which demonstrate substantial or strong evidence of carcinogenicity in humans or animals, and the rapid induction of tumors in animals and bladder cancer in workers exposed to benzidine-based dyes.

The Department considers "known mutagens" to include chemicals which have at least three positive results in at least two of three test systems measuring gene or chromosome mutation or changes in ploidy. The Department considers "known teratogens" to include chemicals for which there is epidemiological evidence of teratogenicity in humans or positive teratogenic evidence in at least two different animal species.

77. COMMENT: FEMA/FMA alleged that the substances on the SHHSL must pose a "special hazard" to workers in addition to their "known carcinogenicity, mutagenicity, etc.".

RESPONSE: FEMA/FMA have misinterpreted the law. The special hazard to workers is the carcinogenicity, mutagenicity, etc., of the hazardous substances as determined by the Department. See Comment 76, which quotes from N.J.S.A. 34:5A-5(b).

78. COMMENT: Du Pont suggested that the Department develop a list of any future additions, deletions and modifications to the SHHSL because it would greatly assist those subject to the Right to Know law by quickly identifying only the proposed changes from the previous list

and would facilitate compliance by eliminating time-consuming cross-referencing.

RESPONSE: See the Department's response to Comment 70.

79. COMMENT: FSE claimed there were 165 special health hazard codes missing from chemicals on the RTKHSL or which identified hazardous substances which should be added to both the RTKHSL and SHHSL.

RESPONSE: These are comments recommending changes to specific chemical listings on N.J.A.C. 8:59, Appendix B—Special Health Hazard Substance List. These comments have been addressed in the proposal for repeal and readoption of N.J.A.C. 8:59, Appendix A (Right to Know Hazardous Substance List) and Appendix B (Special Health Hazard Substance List), which will appear soon in the New Jersey Register.

SUBCHAPTER 11. COMMUNITY RIGHT TO KNOW; LABELING; PRIVATE EMPLOYERS

80. COMMENT: CIC suggested that the Department withhold its proposed compliance date of March 31, 1990 in N.J.A.C. 8:59-11.6(b) until the U.S. Supreme Court renders its decision as to whether or not it will hear the industry's appeal in *New Jersey Chamber of Commerce v. Hughey.*

RESPONSE: The U.S. Supreme Court rendered its decision on July 3, 1989 and refused to hear the industry's appeal of the above case, which upheld the decisions of the U.S. Third Circuit Court of Appeals and U.S. District Court finding that the New Jersey Right to Know Act's labeling requirements were not preempted by the OSHA Hazard Communication Standard in the private sector. There is no reason now to postpone the proposed compliance date.

81. COMMENT: Hoffmann-La Roche suggested that the compliance date in N.J.A.C. 8:59-11.6(b) be set at one year from the final disposition of the appeal before the U.S. Supreme Court.

RESPONSE: The Department believes that the proposed March 31, 1990 deadline is appropriate for manufacturers to meet. Since the court rendered its decision on July 3, 1989, Hoffmann-La Roche will actually have nine months to come into compliance.

82. COMMENT: FEMA/FMA alleged that the proposed compliance deadline in N.J.A.C. 8:59-11.6(b) is arbitrary because of the uncertainty of when the U.S. Supreme Court will render its decision, and it is contrary to legislative intent because the original allowable time period was 14 months for hazardous substance labeling and 24 months for universal labeling. As a non-manufacturer, PSE&G recommends a deadline for compliance of one year. The RTK Coalition supports the March 31, 1990 deadline for private sector employers to comply with universal labeling. Atlantic Electric recommended allowing manufacturers one year to come into compliance.

RESPONSE: The U.S. District Court, in its Final Judgment filed on March 25, 1988 in *New Jersey Chamber of Commerce v. Hughey,* ordered the plaintiff-manufacturers to comply with the environmental and universal labeling requirements of the New Jersey Right to Know Act within six months. The Department agrees with this judgment of the court because it is a reasonable period of time for manufacturers and non-manufacturers to come into compliance, and sees no need to change it. As previously mentioned, there is actually nine months in which to comply. To re-state the deadline: manufacturers (which covers all employers in SIC Codes 20-39) and certain non-manufacturers (see the definition of "employer" in N.J.A.C. 8:59-11.3(b)) must be in compliance with environmental and universal labeling by March 31, 1990.

83. COMMENT: FSE proposed lowering the quantity of the labeling exemption in N.J.A.C. 8:59-11.6(c) from one pound to two ounces to eliminate the inequity to public employers which must label containers down to two ounces. PSE&G suggested that the wording be slightly changed to say "containers one pound or less . . ." GPU Nuclear wanted to know whether "one pound" refers to gross or net weight. The RTK Coalition disagreed with the provision that allowed all containers of less than one pound to be exempt from labeling because there is no statutory authority for it, there is already an acceptable alternative labeling method for containers of two ounces or less, public sector and private sector employers' labeling requirements should be the same, and the same hazardous chemical could be stored in multiple containers of less than one pound to get around the law's requirements.

RESPONSE: After examining the issue further, the Department has concluded that it does not have statutory authority to establish a minimum size of container that must be labeled when the law clearly does not set any minimum container size. It also would be inequitable for public employers to have to label small containers when private employers would not have to label them. This proposed amendment to the rules has been deleted. It should be noted that containers of two ounces or less can be labeled by means of a code or number system utilizing Material Safety Data Sheets (see N.J.A.C. 8:59-5.1(i)).

84. COMMENT: The DEP objected to N.J.A.C. 8:59-11.8, without some amendment which gives them joint review and approval authority.

RESPONSE: See response to Comment 65. N.J.A.C. 8:59-11.8 has not been changed.

85. COMMENT: PSE&G raised the point that N.J.A.C. 8:59-1.3, Definitions, N.J.A.C. 8:59-5, Labeling Containers, and N.J.A.C. 8:59-8, Enforcement, which are referenced in N.J.A.C. 8:59-11 to apply to Community Right to Know labeling in the private sector, contain many references to employee, employee representative, employee access to information, employee exposure, hazardous substance fact sheets, and other employee references, and that Subchapter 11 should be revised to delete all of these non-Community Right to Know references.

RESPONSE: The Department believes that it would in fact be more confusing if two sets of Department of Health Right to Know rules were prepared with two sets of definitions, two sets of labeling requirements, two sets of enforcement rules, etc. N.J.A.C. 8:59-11 was set up so that a private employer could see that only part of the New Jersey Right to Know rules apply to it; primarily labeling, but also the definitions that accompany it, the RTKHSL and SHHSL, the joint trade secret claim rules, and, of course, the section on enforcement. However, since confusion could arise when a private employer sees references to employees in N.J.A.C. 8:59-1.3, 5 and 8, all references to "employee" in these three sections have been qualified to indicate whether it applies to public or private employees or both. In addition, N.J.A.C. 8:59-8.2(b) has been modified to clarify which violations apply to public employers only, and which apply to both public and private employers.

OTHER COMMENTS

86. COMMENT: FSE recommended the addition of a new subchapter to cover the certification of consulting organizations because many consultants are not qualified to provide offered services, misrepresentation of capabilities are common, and many employers are not qualified to differentiate qualified from unqualified consultants.

RESPONSE: The Department recently obtained the authority, through N.J.S.A. 34:5A-13 and 26 (P.L. 1989, c. 155), to certify the education and training programs of consultants providing Right to Know education and training, and the qualifications of consultants who provide Right to Know training as "technically qualified persons". Rules are being drafted and will be added to subchapter 6 or added as a new subchapter within the next year.

87. COMMENT: The RTK Coalition supported the requirements found throughout the rules which require employers to obtain Material Safety Data Sheets, keep them in the central file, distribute them to employees, and use them in the Right to Know education and training program.

RESPONSE: The Department sees the addition of these requirements as the closing of a serious deficiency in the Right to Know rules. MSDS's provide valuable information about mixtures to employees and must be obtained by employers and the information disseminated to employees.

88. COMMENT: The RTK Coalition supported the provisions found throughout the rules which regulate the hazardous substances brought into public facilities by outside contractors by requiring exposed public employees to be trained, requiring reporting of hazardous substances on the Right to Know Survey, and requiring the proper labeling of contractors' containers.

RESPONSE: This is another area where a situation existed which caused public employees not to be fully protected by the information requirements of the Right to Know law. Public employees should now be able to obtain information about all potential and actual hazardous substance exposures in their workplaces.

89. COMMENT: Hoffmann-La Roche felt that the Department had seriously understated the economic impact of compliance with the labeling regulations. They said that "the cost of printing labels will be small compared with the cost of developing proper language for same, performing mixture tests to determine the top five ingredients, and the nonproductive labor costs of affixing labels to . . . tens of thousands of containers as well as constantly changing the labels." They felt that costs would be substantial and benefits would be marginal.

RESPONSE: There will, of course, be costs associated with any new regulatory program, but the Department feels that the benefits of protection of the health and safety of emergency responders and the citizens of the community are substantial benefits.

90. COMMENT: Atlantic Electric argued that the new rules would have significant economic impact, both to the regulated community as well as to consumers, because they have to report RTKHSL substances on the Community Right to Know Survey at zero threshold levels, they have to reformat and revise labels to include universal labeling information, and they expect to have to re-label most containers purchased from out-of-State companies. All of these costs could eventually be passed on to the consumer in the form of increased product prices and rates. New Jersey Bell felt that labeling containers would pose an extreme economic burden for them, in excess of $25,000 annually, and would outweigh the benefits.

RESPONSE: See response to Comment 89.

91. COMMENT: FEMA/FMA put forth the position that the proposed new rules failed to meet the standards required by the New Jersey Regulatory Flexibility Act which requires the Department to take into account the impact that promulgating the rules would have on small businesses, and are thus invalid.

RESPONSE: The Department disagrees with this allegation. The Regulatory Flexibility Act requires an agency to "accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small businesses. . . ." Methods recommended to minimize economic impact include the establishment of differing compliance requirements or timetables, the use of performance standards, and an exemption from coverage by the rule or a part thereof, as long as the public health, safety, and general welfare is not endangered.

The original legislation did not make any distinction between small businesses and large businesses in its compliance timetables, nor did the court make such a distinction in its recommendation of a six-month deadline; therefore, the Department feels that it cannot make such a distinction now. In addition, it is critical to the protection of the health and safety of emergency responders and the community for containers to be labeled, and this protection outweighs any justification to allow small businesses (many of which use hazardous substances) extra time to label containers. Small businesses which are downstream users will be able to purchase properly labeled containers from manufacturers as of March 31, 1990 and possibly before that date. The six-month period prior to March 31, 1990 is sufficient time for small businesses to label containers that are currently in stock. Allowing the use of performance standards and exempting small businesses from partial coverage of the law is not possible due to the specific requirements of the Right to Know law.

However, the Department has reduced the expense and burden of complying with labeling for all employers, including small businesses, by allowing the use of existing Federal and State labels (see N.J.A.C. 8:59-5.5), allowing the use of alternative labeling for containers which are two ounces or smaller (see N.J.A.C. 8:59-5.1(i)), allowing the use of batch sheets and operating manuals for reaction vessels that are not considered process containers (see N.J.A.C. 8:59-5.1(h)), and allowing many other alternatives to Right to Know labeling which are included throughout N.J.A.C. 8:59-5.

In presenting the regulatory flexibility analysis, the Department is permitted to include general descriptive statements if quantification is not practicable or reliable. Most of the 35,000 covered private employers probably fit within the definition of "small business" (that is, less than 100 full-time employees) and they cut across all of the covered SIC codes, with certain SIC codes being almost exclusively small businesses (for example, SIC 55-Automobile Dealers and Gasoline Service Stations). In order to comply with the labeling requirements of the Right to Know law, which are clearly set forth in N.J.A.C. 8:59-5, a small business can take several types of action: hire a new employee to perform initial labeling and maintain labeling, hire a consultant to perform initial labeling, reassign job responsibilities among existing staff to require departmental managers or staff to perform labeling within their departments or work areas, purchase only new products which are properly labeled, purchase labels from a consultant and apply them, utilizing existing staff, or work with other employers or trade associations to perform initial labeling and maintain labeling.

The initial and ongoing costs of complying with labeling will vary greatly according to the type of action taken by a small business. Many non-manufacturers already have some idea of the cost as a result of incurring costs for Right to Know labeling during the time they were covered between 1984 and 1987. In fact, the cost will be much less for non-manufacturers this time because the New Jersey manufacturers they purchase from will now be required to sell products that are properly labeled. Obviously, small businesses of different types and sizes will have different costs. Ongoing compliance costs should be minimal, if the employer buys properly labeled products from now on. As indicated previously, N.J.A.C. 8:59-5 is designed to minimize the adverse economic impact of the rule on small businesses as well as large businesses, while staying within the specific requirements of the Right to Know law.

92. COMMENT: In 1987, the United States Department of Labor revised its Standard Industrial Classification (SIC) Manual which resulted in the deletion of certain SIC codes, the addition of new SIC codes, and the moving of employers into or out of SIC codes.

RESPONSE: The Worker and Community Right to Know Act only covers private employers within certain SIC codes which are specified in the statute. To reflect the 1987 SIC code changes, N.J.A.C. 8:59-11.3(b) is being amended to substitute SIC 4512-Air Transportation, Scheduled, for SIC 4511-Air Transportation, Certified Carriers; to delete SIC 471-Freight Forwarding; and to substitute SIC 8734-Testing Laboratories, for SIC 7397-Commercial Testing Laboratories. The reasons for these changes is that the statute intended to include the employers in former SIC code 4511 and most of these employers were moved into new SIC code 4512 which now contains a majority of formerly covered employers, therefore the new SIC code is covered; all of the employers in former SIC code 471 were moved into new SIC code 473 which now contains a majority of employers who were not formerly covered, therefore the new SIC code is not covered; and all of the employers in former SIC 7397 were moved into new SIC code 8734 which now contains all formerly covered employers, therefore the new SIC code is covered.

Other changes involving employers within SIC codes include: employers who were moved from SIC 4511 into an SIC code other than SIC 4512 are no longer covered by the Right to Know law; some new employers were added to SIC 482-Telegraph and Other Message Communications, and are now covered by the law; some new employers were added to SIC 49-Electric, Gas and Sanitary Services, and are now covered by the law; employers who were moved from SIC 5199-Wholesale Trade, Durable Goods, NEC, into other SIC codes are no longer covered by the law; and some new employers were added to SIC 8249-Vocational Schools, NEC, and are now covered by the law. A private employer who is affected by one of the above SIC codes and who wishes additional information on his status should contact the Division of Labor Market and Demographic Research, New Jersey Department of Labor.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:59.

Full text of the amendments and new rules follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

8:59-1.3 Definitions

The following words and terms have the following meanings unless the context clearly indicates otherwise:

. . .

"Designated county lead agency" means a health agency or office of emergency management designated by the county clerk to be responsible for conducting all county health department activities required by this act in the county.

. . .

"Emergency responder" means a firefighter, police officer, emergency medical technician, hazardous materials technician, and other similar person who responds to a hazardous substance spill, fire or other incident involving the actual or potential release of a hazardous substance.

"Emergency Services Information Survey" or "ESI Survey" means a written form prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the hazardous materials at its facility, including, but not limited to, the following: the name of the hazardous material and its United States Department of Transportation identification number, the United States Department of Transportation designated hazard class, the approximate range of maximum inventory quantity, the units of measure, the major methods of storage or types of containers, and whether the substance is present in a mixture. The ESI Survey is incorporated into the Right to Know Survey.

"Employee" ***or "public employee"*** means any paid full-time or part-time salaried, seasonal or hourly worker of a covered public employer, and shall include volunteer firefighters and volunteers who work for a covered public employer.

. . .

"Employee representative" means a certified collective bargaining agent or attorney or individual or organization to whom *[an]* ***a public*** employee gives written authorization to exercise his ***or her*** rights to request information pursuant to the provisions of the Act, or a parent or legal guardian of a minor or legally incompetent ***public*** employee.

"Employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26.

. . .

"Environmental hazardous substance list" means the list of environmental hazardous substances developed by the Department of Environmental Protection pursuant to N.J.S.A. 34:5A-4. The environmental hazardous substance list is incorporated into the Right to Know Hazardous Substance List.

"Environmental survey" means a written form, entitled Part I or Part II, as the case may be, prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at his facility. The environmental survey is incorporated into the Right to Know Survey.

. . .

"Exposed" means that *[an]* ***a public*** employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (for example, accidental or possible) exposure.

. . .

"Facility" means the building, equipment and contiguous area at a single location used for the conduct of business and shall include any area where ***public or private*** employees are periodically assigned. Remote installed equipment that is not located in a building, which *[an]* ***a public or private*** employee may occasionally repair, maintain, check for proper operation, expand, remove, or replace shall be considered part of the facility from which ***public or private*** employees are assigned to perform this work. Except for the purposes of education and training, N.J.S.A. 34:5A-13(c), labeling, N.J.S.A. 34:5A-14, and communication with the local fire department, N.J.S.A. 34:5A-25(b), "facility" shall not include a research and development laboratory.

. . .

"Hazardous substance" means any substance, or substance contained in a mixture, included on the hazardous substance list developed by the Department of Health pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, or otherwise handled at a facility. "Hazardous substance" shall not include.

1. Any article containing a hazardous substance if the hazardous substance is present in a solid form which does not pose any acute or chronic health hazard to *[an]* ***a public or private*** employee or emergency responder exposed to it;

2. Any hazardous substance constituting less than one percent of a mixture unless the hazardous substance is present in an aggregate amount of 500 pounds or more in a container at a facility;

3. Any hazardous substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;

4. Any hazardous substance present in the same form and concentration as a product packaged for distribution and use by the general public to which *[an]* ***a public or private*** employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the toxic substance, present in normal consumer quantities; or

5. Any fuel in a motor vehicle.

"Hazardous substance fact sheet" means a written document prepared by the Department of Health for each hazardous substance except for generic categories, and transmitted by the Department to ***public*** employers, county health departments, county clerks, designated county lead agencies and the public pursuant to the provisions of the Act.

. . .

"One percent" means one percent by weight or volume.

. . .

"Potential exposure" includes exposure resulting from foreseeable emergencies such as, but not limited to, equipment failure, rupture of containers, or failue of control equipment which could result in an uncontrolled release of a hazardous substance into the workplace and exposure to *[an]* ***a public*** employee.

"Private employee" means any paid full-time or part-time salaried, seasonal or hourly worker of a covered private employer.

. . .

"Research and development laboratory"means a specially designated area used primarily for research, development, and testing activity and not primarily involved in the production of goods for commercial sale, in which hazardous substances or environmental hazardous substances are used by or under the direct supervision of a technically qualified person. "Primarily" means greater than 50 percent.

"Right to Know Hazardous Substance List" includes the workplace hazardous substance list and the environmental hazardous substance list.

"Right to Know Survey" includes the workplace survey, environmental survey, and the emergency services information survey.

. . .

"Technically qualified person" means a person who is a registered nurse, or has a bachelor's degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances; or has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association, private organization or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience supervising employees who handle hazardous substances or work with hazardous substances. The 30 hour requirement may be met by the combination of one or more hazardous materials training courses.

. . .

"Trade secret claim" means a written request, made by an employer pursuant to N.J.S.A. 34:5A-15 and N.J.A.C. 8:59-3, to withhold the public disclosure of information on the grounds that the disclosure would reveal a trade secret.

. . .

"Workplace Hazardous Substance List" means the list of hazardous substances developed by the Department of Health pursuant to N.J.S.A. 34:5A-5. The Workplace Hazardous Substance List is incorporated into the Right to Know Hazardous Substance List.

"Workplace survey" means a written document, prepared by the Department of Health and completed by a public employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility. The workplace survey is incorporated into the Right to Know Survey.

8:59-1.4 Covered employers exempt from provisions of the law.

(a) Any public employer whose Right to Know survey transmitted to the Department of Health indicates that no hazardous substances are present at the facility shall be exempt from the provisions of the Act for that facility, except for the requirement to annually update the Right to Know survey pursuant to N.J.A.C. 8:59-2, and except for the provisions of N.J.S.A. 34:5A-33 and N.J.A.C. 8:59-8 providing for enforcement of violations of the Act.

(b) Any public employer exempted from the provisions of the Act pursuant to this section who transmits to the Department of Health an update of the Right to Know survey which indicates that a hazardous substance is present at the public employer's facility shall immediately be subject to all the provisions of the Act.

SUBCHAPTER 2. RIGHT TO KNOW SURVEY

8:59-2.1 General provisions

(a) A Right to Know survey shall be prepared by the Department of Health and mailed to every public employer covered under the

New Jersey unemployment insurance law who is also covered by the Act.

(b) Every public employer shall report each hazardous substance listed on the Right to Know Hazardous Substance List which is present at its facility.

(c) Every public employer shall complete a Right to Know survey every year.

(d) Within 90 days of receipt of a Right to Know survey, a public employer shall complete and transmit the survey to the Department of Health; the county health department, county clerk, or designated county lead agency, of the county in which the employer's facility is located; the local health department; the Local Emergency Planning Committee; the local fire department; and the local police department.

(e) The Department shall provide, upon request, a Spanish translation of a blank copy of the Right to Know survey to public employers; to county health departments, county clerks, or designated county lead agencies; and to the public.

8:59.2.2 Completion of Right to Know survey

(a) A public employer shall report the hazardous substances which are present at its facility on the Right to Know survey in alphabetical order on each page of the survey. Hazardous substances shall be reported by the common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number listed on the Right to Know Hazardous Substance List. Hazardous substances which are special health hazard substances shall be reported on the Right to Know survey in accordance with N.J.A.C. 8:59-10.1(b). Hazardous substances other than special health hazard substances which are included in a mixture shall be reported on the Right to Know survey if they constitute one percent or more of the mixture or if the substance is present in the aggregate of 500 pounds or more in a container at the facility regardless of the percentage of the substance in a mixture.

(b) In order for the Department to enforce compliance with the law, a public employer shall maintain records which indicate which hazardous substance components are present in which substances, mixtures, or intermediates that are identified by non-generic, generic or non-acceptable common or chemical names. Material safety data sheets should be used for this purpose.

(c) A public employer who wishes to claim a trade secret for the product trade name and chemical name or common name and Chemical Abstracts Service number of a hazardous or other substance shall follow the procedures set forth in N.J.A.C. 8:59-3 for making a trade secret claim on the Right to Know survey.

(d) A public employer shall report on the Right to Know survey any other information the Department determines to be reasonably necessary in order to carry out its responsibilities under the Act.

(e) If a public employer does not know the chemical name and Chemical Abstracts Service number of the components of a substance, mixture, or intermediate, at the time of receipt of the annual Right to Know survey, it shall make a good faith effort to obtain this information from the manufacturer or supplier. The public employer shall maintain written documentation of its good faith effort.

(f) If a public employer is unable to obtain the chemical name and Chemical Abstracts Service number of all hazardous substances or the non-hazardous substances among the five most predominant components of the substance, mixture, or intermediate, it shall notify the Department on the form provided and attach it to the Right to Know survey submitted to the Department. The public employer shall include the identifying name or trade name of the substance, mixture or intermediate, and the manufacturer's name and address, and shall supply the department with any available corresponding material safety data sheet. If the public employer cannot identify the manufacturer's name it shall supply the name and address of the supplier.

(g) A public employer shall certify on the Right to Know survey that the information contained therein is true, accurate and complete to the best of its knowledge.

(h) If a public or private subcontractor stores hazardous substances at a public employer's facility, the public employer shall report these substances on the Right to Know survey.

(i) A public employer shall obtain material safety data sheets from manufacturers, suppliers and subcontractors for all products present at the public employer's facility, purchased for the public employer's facility, and brought on site at the public employer's facility.

8:59-2.3 Additional information requested by local agencies

(a) Any county health department, county clerk, or designated county lead agency, local police department, or local fire department may request from a public employer submitting a Right to Know survey to it further information concerning the survey, except for information claimed as trade secret on the survey form, and the public employer shall provide the additional information upon the request therefore. The public employer shall provide a response within 30 days.

(b) The public employer may require the county health department, county clerk, or designated county lead agency; local police department; or local fire department to sign an agreement protecting the confidentiality of any additional information provided pursuant to (a) above.

SUBCHAPTER 3. TRADE SECRETS (No change.)

SUBCHAPTER 4. HAZARDOUS SUBSTANCE FACT SHEETS

8:59-4.1 General provisions

(a) A hazardous substance fact sheet shall be developed by the Department of Health for each hazardous substance on the Right to Know Hazardous Substance List. This requirement does not include generic categories of substances.

(b) When a public employer files a trade secret claim, it may prepare its own hazardous substance fact sheet pursuant to N.J.A.C. 8:59-4.4(b) subject to the approval of the Department.

(c) The Department shall retain each hazardous substance fact sheet prepared either by the Department or a public employer for 30 years.

(d) Except for fact sheets prepared by public employers claiming a trade secret, the Department shall prepare a Spanish translation of each hazardous substance fact sheet.

(e) The Department shall make available to public employers, county health departments, county clerks, or designated county lead agencies, and the public a Spanish translation of each hazardous substance fact sheet.

(f) A public employer shall maintain and make available to employees material safety data sheets that have been developed or acquired for substances listed on the Right to Know Hazardous Substance List for which hazardous substance fact sheets have not beem completed and for mixtures, in the same manner as hazardous substance fact sheets. The material safety data sheets shall be distributed in addition to hazardous substance fact sheets and not as a substitute. The material safety data sheets shall be made available to the department upon request.

8:59-4.2 Contents of hazardous substance fact sheet

(a)-(b) (No change.)

8:59-4.3 Transmittal to employer

(a) Upon receipt of a completed Right to Know survey from a public employer, the Department of Health shall transmit to that public employer a hazardous substance fact sheet for each hazardous substance reported by the public employer on the Right to Know survey.

(b) The Department shall transmit to a public employer who was unable to list the hazardous substance components of a substance or mixture on the Right to Know survey, a hazardous substance fact sheet for each hazardous substance contained in the substance or mixture when the Department obtains the names of the hazardous substances.

(c) Upon receipt of the annual Right to Know survey, the Department shall supply the public employer with any necessary additional hazardous substance fact sheets.

(d) The Department shall transmit a Spanish translation for each hazardous substance reported by a public employer on the Right to Know survey, upon request.

8:59-4.4 Trade secret claims

(a) If a public employer makes a trade secret claim for a substance on the Right to Know survey pursuant to N.J.A.C. 8:59-3, the Department shall transmit to the public employer a hazardous substance fact sheet for the substance with the public employer's trade secret registry number for the substance listed in place of the name of the substance and the Chemical Abstracts Service number, unless the public employer notifies the Department that it desires to prepare its own hazardous substance fact sheet in accordance with (b) below.

(b) A public employer may prepare a hazardous substance fact sheet for any substance for which a trade secret claim has been made in order to maintain the confidentiality of the trade secret.

1. The hazardous substance fact sheet prepared by a public employer shall contain the information set forth in N.J.A.C. 8:59-4.2(a)2 to 8. The information required in N.J.A.C. 8:59-4.2(a)3 may be expressed in descriptive terminology. The interpretation of data for a fact sheet prepared by a public employer shall follow the intent of and information contained in the corresponding fact sheet prepared by the Department, including information supplied in addition to that required by N.J.A.C. 8:59-4.2(a).

2. A public employer shall attach a standardized explanatory sheet prepared by the Department to every hazardous substance fact sheet prepared by the public employer.

3. A hazardous substance fact sheet prepared by a public employer shall be available for employee use in the same manner as a fact sheet prepared by the Department, and a copy shall be submitted to the Department within 30 days of receiving the Department's hazardous substance fact sheet. A hazardous substance fact sheet prepared by a public employer need only be distributed to employees on request and to the Department for review. In the case of trade secret claims made after return of the Right to Know survey, a copy of the hazardous substance fact sheet pertaining to the claim shall be submitted to the Department within one month of submission of the trade secret claim.

4. The public employer shall list its trade secret registry number for the substance on the hazardous substance fact sheet.

5. A public employer shall prepare a Spanish translation of the hazardous substance fact sheet and submit a copy to the Department within 30 days of approval of its hazardous substance fact sheet.

(c) The Department shall review hazardous substance fact sheets prepared by public employers for compliance with N.J.A.C. 8:59-4.4(b). During the review by the Department, the public employer's hazardous substance fact sheets shall be made available for employee use in the same manner as a fact sheet prepared by the Department. After review and discussion, the Department shall require, if necessary, modifications to the fact sheets or substitution of the Department's fact sheet for the fact sheet developed by the public employer within 30 days of the Department's review.

SUBCHAPTER 5. LABELING CONTAINERS

8:59-5.1 General provisions

(a) The labeling provisions of this subchapter apply to public employers as defined in N.J.A.C. 8:59-1.3 and private employers as defined in N.J.A.C. 8:59-11.3.

(b) Every container at an employer's facility in which more than one percent of the contents of the container are unknown, shall bear a label stating "Contents Unknown" or "Contents Partially Unknown", as appropriate, in addition to other labeling required by N.J.A.C. 8:59-5.

(c) Every container at an employer's facility shall bear a label indicating the chemical name and Chemical Abstracts Service number of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling." Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance.

(d) Labels shall be affixed to containers before *[employees open the]* containers ***are opened*** or within five working days of the container's arrival at the facility, whichever is sooner. ***No employer may use the contents of a container unless the container is appropriately labeled.*** In warehouses, storage or transfer facilities associated with employers covered by this Act, where containers are not opened, labeling required by or consistent with United States Department of Transportation, 49 CFR Parts 172.101 and 172.102 requirements, may be used.

(e) Laboratories or other facilities which receive containers with unknown materials or old pressurized gas cylinders with unknown contents for analysis of the contents shall label the containers as substances are identified. In the interim period until the contents are identified, these containers shall be labeled in accordance with N.J.A.C. 8:59-5.1(b).

(f) Containers of materials for which the employer does not know the contents, and the manufacturer is unknown or no longer in business, shall be labeled pursuant to the Act or the Federal Resource Conservation and Recovery Act. The employer shall be responsible for determining the components of the container and attaching appropriate labeling.

(g) When an employer receives information that allows it to identify the chemical name and Chemical Abstracts Service number of the components of any product in its facility, it shall label the appropriate containers pursuant to (c), (d) and (e) above within *[30]* ***five working*** days of receiving this information.

(h) Reaction vessels are containers in which reaction or mixing takes place which do not meet the definition of process container. Reaction vessels shall contain labels which identify the substances which are added to the vessel and removed from the vessel. These labels may be placed on an adjoining wall or post in close proximity to the reaction vessel. Batch sheets or operating manuals which contain the information required for labeling in N.J.A.C. 8:59-5.1(a), (b), and (c) may be placed on an adjoining wall or post in close proximity to the reaction vessel to meet the requirement of this section.

(i) Containers which are 56.7 grams (two ounces) or smaller may be labeled by means of a code or number system if the code or number system will allow *[the]* ***a public*** employee ***or emergency responder*** free and ready access at all times to a fact sheet which will provide the ***public*** employee ***or emergency responder*** with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, or the trade secret registry number assigned to the substance ***and, in the case of a public*** *[allow the]* employee, ***allow*** access to this information without the permission or assistance of management, and be available to the ***public*** employee at close proximity to his or her specific job location or locations.

(j) An employer shall not be precluded from including on a label an appropriate hazard warning and the name and address of the substance manufacturer, importer, or other responsible party.

(k) Employers shall not remove or deface labels on incoming containers of substances, unless the container is immediately marked with the information required by this subchapter.

(l) Public employers who operate prisons or jails who believe that container labeling will constitute a security risk at the institution, may request a waiver of the labeling requirements of this subchapter. The waiver shall insure that the employees of the public employer receive all of the information about hazardous substances they are entitled to under the Act, although in a modified manner.

(m) In warehouses, storage and transfer facilities where containers are delivered stacked on skids, the containers remain on the skid until they are shipped out of the warehouse, storage or transfer facility, and it is not possible to get to all the containers without breaking down the skid, only those containers on the outside face of the skid and within reach of an employee need to be labeled in accordance with this subchapter. If the skid is shrink-wrapped, labels must be placed *[inside]* ***on*** the shrink-wrap on all four sides of the skid. If unlabeled containers are removed from the skid, they shall be immediately labeled.

(n) Containers that are packed within properly labeled larger containers need not be labeled in accordance with this subchapter until they are removed from the larger container.

8:59-5.3 Research and development laboratories

Employers may label containers in a research and development laboratory by means of a code or number system, if the code or number system will enable *[an]* ***a public*** employee ***or emergency responder*** to readily make a cross reference to a hazardous substance fact sheet or documentary material retained on file by the employer at the facility which will provide the ***public*** employee ***or emergency responder*** with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, or the trade secret registry number assigned to the substance. The code or number system shall be designed to allow the ***public*** employee free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the container, shall be designed to allow the ***public*** employee access to this information without the permission or assistance of management, and shall be available to the ***public*** employee at close proximity to his ***or her*** specific job location or locations.

8:59-5.4 Mixtures

If a container contains a mixture, an employer shall label the container according to N.J.A.C. 8:59-5.

8:59-5.5 Exceptions to labeling requirements*[—]**;* Federal ***and State*** labeling laws

(a) The labeling requirements of N.J.A.C. 8:59-5.1 shall not apply to containers affixed with labels pursuant to the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163 (7 U.S.C. 121 et al.).

(b) Containers labeled with shipping names of specific substances with identification numbers from the United States Department of Transportation's Hazardous Materials Tables, Title 49 Code of Federal Regulations Parts 172.101, columns 2 and 3A, and 172.102, columns 2 and 4, may be substituted for the information required by N.J.A.C. 8:59-5.1 if the name on the container is identical to the chemical or common name on the Right to Know Hazardous Substance List.

(c) Containers containing waste material shall be labeled. The information required on a label ***for waste material*** pursuant to the Federal Resource Conservation and Recovery Act (RCRA) ***and the New Jersey Solid Waste Management Act (SWMA)*** may be substituted for the information required by N.J.A.C. 8:59-5.1, even though the employer is not regulated by RCRA ***or SWMA***.

(d) The information required on a label for a drug, cosmetic, food, flavor or fragrance pursuant to the Federal Food, Drug and Cosmetic Act (FDCA) may be substituted for the information required by N.J.A.C. 8:59-5.1. This exception shall apply to all containers where the names of all hazardous and other substances of active and "inactive" chemicals as defined by FDCA are included on the label according to N.J.A.C. 8:59-5.1(c). If all active and "inactive" chemicals are not included on the label then this exception shall apply only to containers which are five gallons (18.9 liters) or smaller. *[An]* ***A public*** employer shall make available to ***public*** employees on request, all hazardous substance fact sheets prepared by the Department relevant to the above products, including hazardous substance fact sheets on inactive ingredients as defined by the FDCA.

(e) Containers containing petroleum process streams shall be labeled. Labels for petroleum process streams may contain Chemical Abstracts Service numbers and their corresponding names included in the Toxic Substances Control Act Chemical Substances Inventory (EPA, May 1979) or in the Cumulative Supplements instead of the information required by N.J.A.C. 8:59-5.1. In addition, any substance in sources #1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, shall be indicated on the label. However, aliphatic hydrocarbons in sources #1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 other than n-hexane, need not be included on the label. *[An]* ***A private*** employer shall maintain and make readily accessible to *[employees]* ***emergency responders*** a document that describes and identifies the contents of petroleum process streams. *[An employer shall make available to employees on request, all hazardous substance fact sheets prepared by the department relevant to a process stream.]*

(f) (No change.)

(g) Gas utility pipelines in transmission and distribution systems that meet the United States Department of Transportation's Minimum Federal Standards for Gas Lines may be labeled pursuant to those standards. *[An]* ***A private*** employer shall maintain and make readily accessible to *[employees]* ***emergency responders*** a document that describes and identifies the contents of gas utility pipelines. *[An employer shall make available to employees on request, all hazardous substance fact sheets prepared by the department relevant to a gas utility pipeline.]*

(h)-(i) (No change.)

8:59-5.6 Exclusions from the requirement to label

(a) Containers containing the following categories of hazardous or other substances shall be exempt from the requirements of labeling:

1. Any article containing a hazardous or other substance if the hazardous or other substance is present in a solid form and is not used in a manner which changes its physical form, and which does not pose any acute or chronic health hazard to *[an]* ***a public or private*** employee or emergency responder exposed to it;

2. Any hazardous or other substance constituting less than one percent of a mixture unless the hazardous or other substance is present in an aggregate amount of 500 pounds or more in a container at a facility;

3. Any hazardous or other substance which is a special health hazard substance constituting less than the threshold percentage established by the Department of Health for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;

4. Any hazardous or other substance present in the same form and concentration as a product packaged for distribution and use by the general public to which *[an]* ***a public or private*** employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the toxic or other substance present in normal consumer quantities; or

5. Any fuel in a motor vehicle.

(b) Process containers and directly associated piping whose contents change with the same frequency as the contents of the process containers, and sample valves from the process containers and directly associated piping, need not be labeled. This exclusion shall not apply to pipeline labeling requirements in N.J.A.C. 8:59-5.2, which regulates the labeling of valves, outlets, vents, drains and sample connections.

(c) A container which is removed from a larger container that is labeled in accordance with this subchapter, which is intended only for the immediate use of the employee who performs the removal, and which is used up during the employee's workshift, need not be labeled.

8:59-5.7 Common name

(a) Only common names specified by the department may be substituted for required chemical names on labels.

(b) For hazardous substances listed on the Right to Know Hazardous Substance List, the first name shall be considered the common name for the hazardous substance for purposes of labeling containers. If there is only one name listed for a hazardous substance on the Right to Know Hazardous Substance List, no other name may be used for purposes of labeling containers. Any synonym ***(designated as "syn")*** listed on the Right to Know Hazardous Substance List shall be considered an acceptable common name for purposes of labeling containers. ***Generic names (designated as "gen") listed on the Right to Know Hazardous Substance List can only be used on container labels if there is a CAS number next to the generic name, except for Fuel Oil and Petroleum Oil.***

(c) For substances not listed on the Right to Know Hazardous Substance List, any synonym accepted by the Chemical Abstracts Service shall be considered the common name for the substance for purposes of labeling containers.

8:59-5.8 Labels

(a) A label shall be a sign, emblem, sticker or marker of a durable nature affixed to or stenciled onto a container.

(b) The printing on a label shall be easily readable and not obscured.

(c) The label shall be prominently displayed on the container.

8:59-5.10 Subcontractors

If a public or private subcontractor stores hazardous or other substances at a public employer's facility, the public employer shall ensure that the containers holding these substances are labeled in accordance with this subchapter.

SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM

8:59-6.1 General provisions

(a) Every public employer shall establish an education and training program for its employees, which shall be provided on paid employer time, except for volunteers, and shall:

1. Inform employees in writing and orally of the potential health and safety risks of the hazardous substances listed on the Right to Know Hazardous Substance List and the particular hazards of mixtures listed on material safety data sheets that contain one or more hazardous substances, to which they are exposed or are potentially exposed in the course of their employment; and

2. Train them in the proper and safe procedures for handling the hazardous substances under all circumstances.

(b) All education and training programs shall comply with N.J.A.C. 8:59-6.3.

(c) A public employer shall use a technically qualified person to conduct its education and training program.

(d) All public employers shall submit, attached to their Right to Know survey, a certification that employees who are exposed or are potentially exposed to hazardous substances in the course of their employment, have received an education and training program which meets the requirements of N.J.A.C. 8:59-6.3 within the deadlines set forth in N.J.A.C. 8:59-6.2. Research and development laboratories shall certify by letter that all employees have received an education and training program which meets the requirements of N.J.A.C. 8:59-6.3 by January 1 of each year.

(e) Public employers shall maintain a written record of training given to employees. This record, at a minimum, shall describe the training, the date or dates on which it was given, the names and signatures of the employees, and the person conducting the training. These records shall be maintained by the public employer for the duration of each employee's employment and shall be made available to the Department upon request.

(f) Municipalities shall be responsible for providing the education and training program to the volunteer firefighters in their municipality.

8:59-6.2 Program for employees

(a) By December 31, 1985, a public employer shall have provided current employees with a complete education and training program, and shall provide an education and training program for these employees annually thereafter. *[The annual training shall occur within 12 months of the initial training and within 12 months of subsequent annual training programs.]* ***Volunteer firefighters shall receive an education and training program by March 6, 1990. All other volunteers shall receive an education and training program by October 1, 1990.***

(b) A public employer shall provide new or reassigned employees with an education and training program within the first month of employment or reassignment.

(c) A public employer shall provide employees with an education and training program for hazardous substances which were unknown to the public employer, within three months of receiving the identity of and hazardous substance fact sheets for the hazardous substance components of a substance or mixture pursuant to N.J.A.C. 8:59-4.3(b).

(d) A public employer shall provide employees whose native language is Spanish and who cannot read or speak English above a 6th grade level, with an education and training program in Spanish, including written materials.

(e) Prior to entering an employment agreement with a prospective employee, a public employer shall notify the prospective employee of the availability of Right to Know surveys and appropriate hazardous substance fact sheets at the Department of Health; county health department, county clerk, or designated county lead agency; and employer's facility (including material safety data sheets at the facility) for the facility at which the prospective employee will be employed.

8:59-6.3 Contents of program

(a) The design of an acceptable education and training program shall include a definition of objectives including cognitive and behavioral goals, technically qualified instructors, and a method to evaluate the effectiveness of the program.

(b) An education and training program for employees shall contain, at a minimum, the following:

1. A general overview of occupational health including an explanation of:

i. The common methods used to recognize occupational health and safety hazards;

ii. The common methods used to measure and evaluate employee exposure to hazardous substances;

iii. The common methods used to prevent and control employee exposure to hazardous substances including methods which (1) eliminate the source of the contaminant; (2) prevent dispersion of the contaminant; and (3) provide personal employee protection;

2. An explanation of the nature of and potential health and safety risks, including acute and chronic effects and symptoms of effects of exposure, of the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment, as set forth in the hazardous substance fact sheets, material safety data sheets, and other sources. Hazardous substances with similar health and safety risks may be grouped together for purposes of explanation;

3. An explanation of the proper and safe procedures for handling, under all circumstances, the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment, including the use and functioning of personal protective equipment, the policy and program for use of respirators, appropriate emergency treatment for exposure, procedures for cleanup of leaks and spills, and any special use conditions. This shall include an explanation about any operations in the work area which use hazardous substances. *[Appropriate employees]* ***Employees who use personal protective equipment*** shall be given "hands-on" training in the proper use and functioning of personal protective equipment and *[certain designated]* employees ***who use cleanup and firefighting equipment*** shall be given "hands-on" training in the use of cleanup and firefighting equipment;

4. Information regarding the provisions of the Worker and Community Right-to-Know Act:

i. A general explanation of the Right to Know survey and the substances listed on the employer's Right to Know survey, including distribution of a sample page of a survey;

ii. An explanation of the employer's obligation to label containers in its facility with chemical or common names and Chemical Abstracts Service numbers;

iii. A general explanation of hazardous substance fact sheets and material safety data sheets and distribution of a sample fact sheet and material safety data sheet;

iv. A description of the existence, location, and hours of operation of the central file maintained by the employer for storing the Right to Know survey and appropriate hazardous substance fact sheets and material safety data sheets;

v. An explanation of the employee's right and relevant procedures to obtain a copy of the Right to Know survey, hazardous substance fact sheets and material safety data sheets from the employer, from the county health department, county clerk, or designated county lead agency, or from the Department of Health; to obtain copies from the county health department, county clerk, or designated county lead agency, and Department of Health in confidence; and the employer's obligation to supply, without cost, copies of the Right to Know survey and appropriate hazardous substance fact sheets to

employees and, where appropriate and available, material safety data sheets, within five working days of a request;

vi. An explanation of the employee's right to refuse to work with a hazardous substance for which a request was made for a Right to Know survey, appropriate hazardous substance fact sheet, the chemical name and Chemical Abstracts Service number of a substance in a container which is not labeled pursuant to N.J.A.C. 8:59-5, or the chemical name of a substance labeled with a common name, for the facility at which he or she is employed, and not honored within five working days of the request; the employee's right not to lose pay or forfeit any other privilege until the request is honored and not to be discharged, disciplined, penalized, or discriminated against for exercising any right under the law; and the appropriate agency to whom the employee would register a complaint regarding a violation of the law;

5. Informing and physically showing employees the location of the hazardous substance containers present at the facility with which they work and with which they are likely to work. Employees assigned plant-wide or to more than one location may be shown a representative work area where hazardous substance containers are present;

6. The opportunity for employees to ask questions related to hazardous substances and the New Jersey Worker and Community Right-to-Know Act.

(c) Every ***public*** employer shall annually supply all employees with the Right to Know brochure and any other material designed and provided by the Department of Health, the Department of Environmental Protection, and the Department of Labor to inform employees of their rights under the Act at those facilities where hazardous substances are present. All new employees, regardless of potential exposure to a hazardous substance, shall receive the Right to Know brochure developed by the above-referenced departments, within the first month of employment.

(d) Every public employer shall post on bulletin boards or in other conspicuous areas in the facility any posters designed and provided by the Department to inform employees of their rights under the Act.

(e) Research and development laboratories shall provide their employees with appropriate hazardous substance fact sheets and available material safety data sheets as part of their education and training program.

(f) If the only hazardous substance to which an employee is exposed is toner or developer for a copying machine when the employee periodically replenishes the toner or developer in the machine, or gasoline for a motorized vehicle when the employee periodically fills the vehicle or a small can with gasoline, the public employer is not required to provide the full education and training program (including a technically qualified trainer) or annual training to the employee if the public employer:

1. Provides the employee with the appropriate hazardous substance fact sheet and material safety data sheet on the toner or developer, or gasoline, as appropriate;

2. Reviews the hazardous substances fact sheet and material safety data sheet with the employee and explains its provisions;

3. Answers all questions by the employee about this information; and

4. Provides the employee with the Right to Know brochure developed by the Departments of Health, Environmental Protection and Labor.

5. A fact sheet developed by the Department on the hazards of photocopiers may be substituted for hazardous substance fact sheets.

8:59-6.4 (Reserved)

8:59-6.5 Subcontractors

(a) When a public or private subcontractor produces, uses or stores hazardous substances at a public employer's facility in such a way that the employees of the public employer are or may be exposed to the hazardous substances, the public employer shall find out the identity of the hazardous substances and provide health hazard and protective procedure information about the substances to exposed and potentially exposed employees during the annual education and training program or upon request of an employee or employee representative, whichever occurs sooner.

(b) If not part of the annual training program, such information may be provided to exposed and potentially exposed employees in writing. The public employer shall provide exposed and potentially exposed employees with appropriate hazardous substance fact sheets or material safety data sheets, if requested.

SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

8:59-7.1 Department of Health obligations

(a) The Department of Health shall maintain a file of all completed Right to Know surveys received from public employers and hazardous substance fact sheets prepared by the Department or by public employers.

(b) The Department shall retain hazardous substance fact sheets prepared by the Department and each Right to Know survey and hazardous substance fact sheet received from public employers, for 30 years.

(c) Any person may request in writing from the department a copy of a Right to Know survey for a facility or a copy of any hazardous substance fact sheet.

(d) The Department shall transmit any material requested pursuant to (c) above within 30 days of the request.

(e) Any request by an employee for material pertaining to the facility where he or she is employed made pursuant to (c) above shall be treated by the Department as confidential.

(f) Any person who requests the disclosure of information for which a trade secret claim has been made or approved, shall follow the procedures set forth in N.J.A.C. 8:59-3.10.

(g) The Department shall not distribute to any person, except as provided in N.J.A.C. 8:59-3.15, hazardous substance fact sheets prepared by public employers for the protection of trade secrets.

(h) The Department shall have the right to charge for making and supplying copies of any documents requested by any persons in accordance with N.J.S.A. 47:1A-1 et seq. The Department shall have the right to charge for copies of hazardous substance fact sheets requested by any person except for those sent to an employer in response to hazardous substances reported on the workplace survey and except for research and development laboratories covered by the Act.

8:59-7.2 Employer obligations

(a) Every public employer shall establish and maintain a central file at its facility in which it shall retain a completed Right to Know survey for the facility, appropriate hazardous substance fact sheets and material safety data sheets, and the Right to Know Hazardous Substance List.

(b) Every public employer shall post on bulletin boards in the facility readily accessible to employees, a notice of the availability of Right to Know surveys, hazardous substance fact sheets, material safety data sheets, and the Right to Know Hazardous Substance List, from the employer, from the Department of Health, from the Department of Environmental Protection, and from the county health department, county clerk, or designated county lead agency. A poster provided by the Department shall be used to meet the requirements of this subsection.

(c) A public employer shall, upon request, provide an employee whose native language is Spanish or employee representative, with a Spanish translation of a Right to Know survey, hazardous substance fact sheet and, if applicable, a material safety data sheet. Every employer with employees whose native language is Spanish shall post the notice required in (b) above in Spanish.

(d) A public employer shall, upon written request, provide an employee or employee representative with a copy of a Right to Know survey, appropriate hazardous substance fact sheets and, if applicable, material safety data sheets, at no cost. This information shall be provided as soon as possible but at the least within five working days of the request. For a mixture, a public employer shall, upon written request, provide an employee or employee representative with a copy of the appropriate material safety data sheet.

(e) A public employer shall, upon written request, provide an employee or employee representative with the chemical name of a substance in a container labeled with a common name. This infor-

mation shall be provided as soon as possible but at the least five working days of the request.

(f) A public employer shall, upon written request, provide an employee or employee representative with the chemical name and Chemical Abstracts Service number or trade secret registry number of all hazardous substances and the five most predominant substances contained in any container which is not labeled pursuant to the Act. This information shall be provided as soon as possible but at the latest within five working days of the request.

(g) Every research and development laboratory shall establish a communications program with the local fire department, which shall be designed to assist the fire department in adequately preparing to respond to emergencies at the research and development laboratory.

(h) If a public employer cannot supply a hazardous substance fact sheet or the chemical name and Chemical Abstracts Service number of a substance to an employee who requested it, because the employer has not received the hazardous substance fact sheet which the employer requested from the Department, or does not know the name of the substance or substances constituting the components of the product and has reported this to the Department, the public employer shall:

1. Inform the employee in writing that it has requested and not received the hazardous substance fact sheet from the Department, and provide the employee with the appropriate material safety data sheet; or

2. Inform the employee in writing that it has reported to the Department that it does not know the name of the substance or substances constituting the components of the product, and provide the employee with the appropriate material safety data sheet.

(i) No public employer shall discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or his or her employee representative has exercised any right established in the Act.

(j) The requirements of this section to supply hazardous substance fact sheets and material safety data sheets to employees or employee representatives shall also apply to hazardous substances brought into a public employer's facility (including surrounding land) by a public or private subcontractor.

8:59-7.3 County health department, county clerk, or designated county lead agency obligations

(a) Each county health department, county clerk, or designated county lead agency shall maintain a file of Right to Know surveys and hazardous substance fact sheets transmitted to it pursuant to the provisions of the Act.

(b) Right to Know surveys and hazardous substance fact sheets shall be made available for inspection by the public at no cost and at reasonable hours. If a fee is charged for copies of these documents, the fee shall not exceed the cost of reproducing the document.

(c) A county health department, county clerk, or designated county lead agency shall, upon request, provide to any person copies of the Right to Know survey and hazardous substance fact sheet in a Spanish translation provided by the Department of Health, Department of Environmental Protection, or an employer.

(d) Any request by an employee for material pertaining to the facility where he or she is employed made pursuant to (b) and (c) above shall be treated by the county health department, county clerk, or designated county lead agency as confidential.

8:59-7.4 Police and fire department obligations

No local police department or local fire department receiving Right to Know surveys pursuant to the provisions of the Act shall make the surveys available to the public. This prohibition shall not apply to distribution of surveys to local health departments, Local Emergency Planning Committees, or other units of local government.

8:59-7.5 Employee rights

(a) Any ***public*** employee or employee representative may request, in writing, from his or her employer, a copy of a Right to Know survey, hazardous substance fact sheet, or, where applicable, material safety data sheet, for the facility at which he or she is employed.

(b) *[An]* ***A public*** employee shall have the right to refuse to work with a hazardous substance for which a request was made for a Right to Know survey, appropriate hazardous substance fact sheet or material safety data sheet, ***and shall have the right to refuse to work with any substance for which a request was made for*** the chemical name and Chemical Abstracts Service number of a substance in a container which is not labeled pursuant to N.J.A.C. 8:59-5*[,]* or the chemical name of a substance labeled with a common name, for the facility at which he or she is employed, and not honored within five working days of the request, without loss of pay or forfeit of any other privilege until the request is honored, except in the case of (c) below.

(c) *[An]* ***A public*** employee shall not have the right, pursuant to the Act, to refuse to work with a hazardous substance if an employer cannot supply a hazardous substance fact sheet to an employee who requested it because the employer has not received from the *[department]* ***Department*** the hazardous substance fact sheet which the employer requested from the *[department]* ***Department***.

SUBCHAPTER 8. ENFORCEMENT

8:59-8.2 Civil administrative penalty

(a) The Commissioner of the State Department of Health is authorized pursuant to N.J.S.A. 34:5A-33 to impose a civil administrative penalty of not more than $2,500 for each violation and additional penalties of not more than $1,000 for each day during which a violation continues after receipt of an order from the Commissioner to cease the violation.

(b) The penalty which may be assessed for a violation is to be determined by application of factors indicative of the seriousness and type of the violation, as set forth below.

1. Seriousness:

i. Within the Commissioner's discretion, significant violations shall include, but not be limited to:

(1) Filing ***by a public employer of*** false information on the Right to Know survey;

(2) Failure ***by a public employer*** to conduct an education and training program.

(3) Failure ***by a public employer*** to supply information requested by a county health department, county clerk, or designated county lead agency, local police department, or local fire department concerning the Right to Know survey.

ii. Within the Commissioner's discretion, major violations shall include, but not be limited to:

(1) Failure ***by a public employer*** to return a completed Right to Know survey to the Department within the deadline set forth in N.J.A.C. 8:59-2;

(2) Failure ***by a public employer*** to convey copies of the Right to Know survey to the county health department, county clerk, or designated county lead agency, local fire department, or local police department;

(3) Omission ***by a public employer*** from the Right to Know survey of more than five percent of the hazardous substances present at the public employer's facility;

(4) Failure to make a good faith effort to obtain the chemical names and Chemical Abstracts Service numbers of the components of a product which are unknown to the employer, from the manufacturer or supplier of the product.

(5) Failure to supply the chemical name or common name and Chemical Abstracts Service number of a substance claimed to be a trade secret on the trade secret claim form which is filed with the Department;

(6) Failure to file the trade secret claim form with the Department, if applicable.

(7) Failure ***by a public employer*** to prepare a hazardous substance fact sheet for a trade secret substance in accordance with the requirements of N.J.A.C. 8:59-4.4(b)*[.]***;***

(8) Failure to label at least 95 percent of containers containing hazardous substances *[by the deadlines set forth in N.J.A.C. 8:59-5.1]*;

(9) Failure to label at least 95 percent of all containers *[by the deadline set forth in N.J.A.C. 8:59-5.1(c)]*;

(10) Failure to label at least 95 percent of containers in accordance with the requirements of N.J.A.C. 8:59-5;

(11) *[Conducting]* ***Failure by a public employer to conduct*** an education and training program that *[does not comply]* ***complies*** with the requirements set forth in N.J.A.C. 8:59-6;

(12) Failure ***by a public employer*** to provide ***public*** employees with material provided by the Department;

(13) Failure ***by a public employer*** to post posters provided by the Department to inform ***public*** employees of their rights under the law;

(14) Failure ***by a public employer*** to provide *[an]* ***a public*** employee with a copy of a Right to Know survey, appropriate hazardous substance fact sheets, and, if applicable, material safety data sheets, as soon as possible but at the latest within five working days of the request;

(15) Failure to provide copies of employee health and exposure records requested by the Department;

(16) Failure to grant the Department access to employees in order to request permission to review their health and exposure records;

(17) Failure ***by a public employer*** to establish and maintain a central file which contains a Right to Know survey, appropriate hazardous substance fact sheets and material safety data sheets and Right to Know Hazardous Substance List;

(18) Failure ***by a public employer*** to provide *[an]* ***a public*** employee with the chemical name of a substance in a container labeled with a common name, or in a container which is not labeled pursuant to the provisions of N.J.A.C. 8:59-5, as soon as possible or at the latest within five working days of the request.

iii. Any other violations of the Act or these *[regulations]* ***rules*** shall generally be considered to be non-serious violations. The Commissioner reserves the right to find other violations of the Act to be serious.

2.-5. (No change.)

(c)-(h) (No change.)

8:59-8.9 Inspection procedures

(a) Right to Know Enforcement Officers of the Department of Health are authorized to enter during normal operating hours any facility or other area where work is performed by *[an]* ***a public or private*** employee of an employer; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records required by the Act and rules and regulations promulgated pursuant thereto, and other records which are directly related to the purpose of the inspection.

(b) Upon a refusal to permit the Right to Know Enforcement Officer, in exercise of his official duties, to enter an employer's facility during normal operating hours, to inspect, to review records, or to question any employer, owner, operator, agent, or ***public or private*** employee, the *[department]* ***Department*** shall take appropriate action, including compulsory process, if necessary. The term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

(c)-(d) (No change.)

(e) Right to Know Enforcement Officers shall have the authority to question privately any employer, owner, operator, agent or ***public or private*** employee of a facility concerning matters regarding the Worker and Community Right to Know Act to the extent they deem necessary for the conduct of an effective and thorough inspection.

8:59-8.10 Representatives of employers and ***public*** employees

(a) Right to Know Enforcement Officers shall be in charge of inspections and questioning of persons. A representative of the employer and***, for public employers, a*** representative authorized by *[his]* ***the public*** employees, shall be given an opportunity to accompany the Right to Know Enforcement Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Right to Know Enforcement Officer may permit additional employer representatives and***, for public employers,*** additional representatives authorized by ***public*** employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and***, for public employers, public*** employee representative may accompany the Right to Know Enforcement Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) If there is a disagreement as to who is the representative authorized by the employer and***, for public employers, public*** employees to accompany the Right to Know Enforcement Officer on the inspection, the Right to Know Enforcement Officer shall make the final determination as to who is the authorized representative. The Right to Know Enforcement Officer shall have the authority to talk to any ***public or private*** employee of the facility during the inspection concerning matters regarding Right to Know compliance.

(c) If in the judgement of the Right to Know Enforcement Officer good cause has been shown why accompaniment by a third party who is not an employee of the ***public or private*** employer is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Right to Know Enforcement Officer during the inspection. ***Such third party may be a local emergency responder.***

(d) (No change.)

8:59-8.11 Complaints by ***public or private*** employees

(a) Any ***public or private*** employee or representative of ***public or private*** employees who believe that a violation of the Act exists in any workplace where such ***public or private*** employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the *[department]* ***Department*** or a Right to Know Enforcement Officer. Upon the request of the person giving such notice, his ***or her*** name and the names of individual ***public or private*** employees referred to therein shall be kept confidential by the *[department]* ***Department***.

(b) Prior to or during any inspection of a workplace, any ***public or private*** employee or representative of ***public or private*** employees employed in such workplace may notify the Right to Know Enforcement Officer of any violation of the Act which he ***or she*** has reason to believe exists in such workplace.

8:59-8.12 Posting of orders, penalties and notices of contest

(a) Upon receipt of any civil administrative order, civil administrative penalty, court order, or civil penalty under the Act, *[the]* ***a public*** employer shall immediately post such order or penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the order or penalty occurred***, and a private employer shall send a copy of such order or penalty to the local fire department***. Where, because of the nature of *[the]* ***a public*** employer's operations, it is not practicable to post the order or penalty at or near each place of alleged violation, such order or penalty shall be posted, unedited, in a prominent place where it will be readily observable by all affected ***public*** employees.

(b) (No change from proposal.)

(c) Any ***public*** employer who contests the provisions of a civil administrative order, civil administrative penalty, court order, or civil penalty, shall post such notice of contest next to the order or penalty being contested for as long as the order or penalty is required to be posted. ***A private employer shall send such notice of contest to the local fire department.***

SUBCHAPTER 9. RIGHT TO KNOW HAZARDOUS SUBSTANCE LIST

8:59-9.1 General provisions

(a) Substances not included on the Right to Know Hazardous Substance List shall not be subject to the reporting provisions of the Act.

(b) The absence of any substance from the Right to Know Hazardous Substance List or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

8:59-9.2 Contents of the Right to Know hazardous substance list

(a) The Right to Know Hazardous Substance List consists of the hazardous substances listed in Appendix A, which includes:

1. Any substance or substance contained in a mixture regulated by the Occupational Safety and Health Administration, United States Department of Labor, under Title 29 Code of Federal Regulations (CFR) Part 1910—Occupational Safety and Health Standards for General Industry, Subpart Z—Toxic and Hazardous Substances.

2. Environmental hazardous substances contained in the "Environmental Hazardous Substance List" adopted by the New Jersey Department of Environmental Protection pursuant to the Act and codified in the New Jersey Administrative Code as N.J.A.C. 7:1G.

3. Additional substances which the department has determined pose a threat to the health or safety of employees. The scientific evidence documenting the health or safety threat of the substances listed in Appendix A is contained in the referenced sources listed in Appendix A.

(b) The Right to Know Hazardous Substance List identifies the Chemical Abstract Service number, a common name, the chemical name, the U.S. Department of Transportation Number and the source or sources which provides scientific evidence supporting selection of the substance to the list, for each substance.

8:59-9.3 Modification of the list

(a) The Department shall periodically review the Right to Know Hazardous Substance List and shall make any necessary revisions in accordance with the procedures set forth in (b) through (f) below. The list shall be revised by the Department, if necessary, every three years, unless the Department determines that special circumstances warrant an earlier revision.

(b) The Right to Know Hazardous Substance List shall be revised to reflect revisions to the following sources, which are hereby incorporated by reference:

1. (Source #1) Occupational Safety and Health Administration, Title 29, CFR Part 1910, Subpart Z—Toxic and Hazardous Substances, amended in Federal Register, Vol. 54, No. 12, January 19, 1989, p. 2332-2983.

2. (Source #2) "Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment Adopted by ACGIH for 1988-1989", American Conference of Governmental Industrial Hygienists (ACGIH), 1988.

3. (Source #3) Materials Transportation Bureau, U.S. Department of Transportation, Title 49 CFR Part 172.101—Hazardous Materials Table, October 1, 1982, and Part 172.102—Optional Hazardous Materials Table, amended in Federal Register, Vol. 48, No. 211, October 31, 1983, p. 50234-50279.

4. (Source #4) "NIOSH Recommendations for Occupational Health Standards," National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, Morbidity and Mortality Weekly Report Supplement, Vol. 32, No. 1S, October 7, 1983, and Vol. 34, No. 1S, July 19, 1985.

5. (Source #5) "Fourth Annual Report on Carcinogens," National Toxicology Program, U.S. Department of Health and Human Services, NTP 85-002, 1985.

6. (Source #6) "Environmental Hazardous Substance List", New Jersey Department of Environmental Protection, N.J.A.C. 7:1G.

7. (Source #7) "Chemicals, Industries Processes and Industrial Associated with Cancer in Humans," Supplement 4, Groups 1, 2A and 2B, International Agency for Research on Cancer (IARC), World Health Organization, 1982 (multi-volume); and "Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42," IARC Monographs . . . Supplement 7, IARC, 1987.

8. (Source #8) "Chemicals Having Substantial Evidence of Carcinogenicity", Carcinogens Assessment Group, Office of Health and Environmental Assessment, U.S. Environmental Protection Agency (EPA), Chemical Regulation Reporter, Bureau of National Affairs, August 15, 1980, pages 647-649.

9. (Source #14)

i. "Prohibited and Restricted Use Pesticide List," New Jersey Department of Environmental Protection, N.J.A.C. 7:30-2.

ii. List of restricted use pesticides. United States Environmental Protection Agency, Title 40 CFR Part 162.31, July 1, 1983.

10. (Source #16) List of Acutely Toxic Chemicals, Chemical Emergency Preparedness Program, U.S. Environmental Protection Agency, November 1985.

11. (Source #17) Emergency Response Guidebook, Materials Transportation Bureau, U.S. Department of Transportation, 1987.

12. (Source #18) List of Toxic Chemicals, Section 313, Superfund Amendments and Reauthorization Act of 1986 (SARA), U.S. Environmental Protection Agency, 52 FR 21151.

13. (Source #19) List of Extremely Hazardous Substances, Superfund Amendments and Reauthorization Act of 1986 (SARA), U.S. Environmental Protection Agency, 40 CFR Part 300, Subpart I—Emergency Planning and Community Right to Know, Appendix D. 52 FR 13378, November 14, 1986.

14. (Source #20) List of Hazardous Substances and Reportable Quantities (RQ), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), U.S. Environmental Protection Agency, 40 CFR Part 302, Table 302.4, amended in 51 FR 34541, September 29, 1986.

15. (Source #21) Hazardous Wastes from the P and U Lists, Resource Conservation and Recovery Act (RCRA), U.S. Environmental Protection Agency, 40 CFR 261.33.

(c) The Department shall add to the Right to Know hazardous substance list any substance which it determines poses a threat to the health or safety of any employee or emergency responder and is based on documented scientific evidence.

(d) The Right to Know Advisory Council shall advise the Department of its recommendations for proposed revisions to the Right to Know Hazardous Substance List. Revisions other than those made pursuant to N.J.A.C. 8:59-9.3(b) above to the Right to Know Hazardous Substance List proposed by the Department shall be submitted to the Advisory Council for review and shall be published in the New Jersey Register as a notice of pre-proposal for a rule, pursuant to the requirements of N.J.A.C. 1:30-3.2.

(e) The Department shall consider relevant scientific information in evaluating a revision to the Right to Know Hazardous Substance List. For substances which cause health effects, this information may include, but is not limited to, short-term in vitro tests, animal toxicity tests, human epidemiological studies, clinical studies, and scientifically documented reports of symptoms or adverse health effects among employees. The Department may investigate the situation surrounding any studies or reports in order to obtain additional information regarding a revision.

1.-4. (No change.)

(f) Notice of proposed revisions to the Right to Know Hazardous Substance List which are not included in (b) above shall be published as necessary in the New Jersey Register as a proposed amendment to these rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At least 30 days shall be allowed for public comment. A public hearing shall be held, if, in the Department's determination, there is significant public interest in the proposal. Notice of revisions made pursuant to (b) above shall be published in the New Jersey Register as a public notice, and incorporated into the List.

(g) Employers will be notified of any revisions to the Right to Know Hazardous Substance List through the annual Right to Know survey transmittal.

SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST

8:59-10.1 General provisions

(a) The Special Health Hazard Substance List consists of hazardous substances of the Right to Know Hazardous Substance List which, because of their known carcinogenicity, mutagenicity or teratogenicity in humans, animals, or in vitro tests; or because of their flammability, reactivity/exposivity, or corrosivity, pose a special hazard to the health and safety of employees or the community.

(b) For purposes of reporting hazardous substances on the Right to Know survey form, the threshold percentage for special health hazard substances when present in a mixture shall be one-tenth of

one percent for carcinogens, mutagens, and teratogens, and, for all other substances, one percent or if present in an aggregate amount of 500 pounds or more in a container at a facility.

(c) (No change.)

(d) An employer shall not make a trade secret claim on the Right to Know survey or for labeling containers for any carcinogenic, mutagenic or teratogenic substance which is listed on the Special Health Hazard Substance List and is present as a pure substance or in a mixture at a concentration of one-tenth of one percent or greater, or for any flammable, explosive, reactive, or corrosive substance which is listed on the Special Health Hazard Substance List and is present as a pure substance or at a concentration of one percent or greater in a mixture which meets the hazard criteria as defined in N.J.A.C. 8:59-10.2(a).

(e) (No change.)

8:59-10.2 Contents of the Special Health Hazard Substance List

(a) The Special Health Hazard Substance List consists of hazardous substances with the following properties:

1. Carcinogen—Carcinogens which have met the criteria established by the International Agency for Research on Cancer (IARC) or the National Toxicology Program (NTP) or the Environmental Protection Agency's Carcinogen Assessment Group (CAG) or the criteria of the National Institute for Occupational Safety and Health (NIOSH) for benzidine based dyes, are included on the Special Health Hazard Substance List.

i. IARC categorizes its list of carcinogens into three groups:

(1) Group 1—The chemical, group of chemicals or occupational exposure is carcinogenic to humans. This category was used only when there was sufficient evidence from epidemiological studies to support a causal association between the exposure and cancer.

(2) Group 2—The chemical, group of chemicals or occupational exposure is probably carcinogenic to humans.

(3) Compounds from Group 3 were not included on the Right to Know or Special Health Hazard Substance Lists.

ii. NTP categorizes its list of carcinogens into two groups:

(1) Group 1 includes substances or groups of substances that are known to be carcinogenic, which includes those substances for which the evidence from human studies indicates that there is a causal relationship between exposure to the substance and human cancer.

(2) Group 2 includes substances or groups of substances that may reasonably be anticipated to be carcinogens, which includes those substances for which there is limited evidence of carcinogenicity in humans or sufficient evidence of carcinogenicity in experimental animals.

iii. CAG includes substances which demonstrate substantial or strong evidence of carcinogenicity in humans or animals, based upon positive human epidemiological studies, or a statistically significant increase in malignant tumors or an increase in benign tumors of a progressive nature in at least one animal species. Evidence of carcinogenicity in short-term bioassays was used only as supportive evidence.

iv. NIOSH considers benzidine-based dyes as potential human carcinogens based on the rapid induction of tumors in animals and the demonstration of bladder cancer in workers exposed to benzidine-based dyes. In addition, evidence exists to indicate that benzidine-based dyes are converted to the carcinogen benzidine in laboratory animals and in humans.

2.-6. (No change.)

(b) The Special Health Hazard Substance List consists of the hazardous substances listed in Appendix B.

SUBCHAPTER 11. COMMUNITY RIGHT TO KNOW; LABELING; PRIVATE EMPLOYERS

8:59-11.1 Authority

This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-14 and 30, and the case of *New Jersey Chamber of Commerce v. Hughey**[, United States Third Circuit Court of Appeals, Case Nos. 88-5283 and 88-5332 (February 28, 1989)]*.

8:59-11.2 Purpose

(a) Private employers covered by the Worker and Community Right to Know Act are pre-empted from being subject to the workplace requirements of the Act, but must comply with the community provisions of the Act.

(b) In order to comply with the community provisions of the Act, a private employer must:

1. Submit a completed Community Right to Know Survey to the Department of Environmental Protection pursuant to N.J.A.C. 7:1G; and

2. Label all containers in the workplace pursuant to this subchapter (N.J.A.C. 8:59-11).

8:59-11.3 Definitions

(a) All of the definitions in N.J.A.C. 8:59-1.3 shall apply to this subchapter except for the definition of "employer".

(b) For this subchapter and for N.J.A.C. 8:59-1, 3, 5, 8, 9 and 10*,* "employer" shall also mean any person or corporation in the State engaged in business operations which has a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be: Major Group Number 07 (Agricultural Services), only Industry Number 0782-Lawn and garden services; Major Group Numbers 20 through 39 inclusive (manufacturing industries); Major Group Number 45 (Transportation by Air), only Industry Number *[4511]***4512***-Air Transportation, *[certified carriers]* ***scheduled***, and Group Number 458-Air Transportation Services; Major Group Number 46 (Pipelines, Except Natural Gas); Major Group Number 47 (Transportation Services), only Group Numbers *[471-Freight Forwarding,]* 474-Rental of Railroad Cars, and 478-Miscellaneous Services Incidental to Transportation; Major Group Number 48 (Communication), only Group Numbers 481-Telephone Communication, and 482-Telegraph Communication; Major Group Number 49 (Electric, Gas and Sanitary Services); Major group Number 50 (Wholesale Trade-Durable Goods), only Industry Numbers 5085-Industrial Supplies, 5087-Service Establishment Equipment and Supplies, and 5093-Scrap and Waste Materials; Major Group Number 51 (Wholesale trade, nondurable goods), only Group Numbers 512-Drugs, Drug Proprietaries and Druggist's Sundries, 516-Chemicals and Allied Products, 517-Petroleum and Petroleum Products, 518-Beer, Wine and Distilled Alcoholic Beverages, and 519-Miscellaneous Nondurable Goods; Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551-Motor Vehicle Dealers (New and Used), 552-Motor Vehicle Dealers (Used only), and 554-Gasoline Service Stations; Major Group Number 72 (Personal Services), only Industry Numbers 7216-Dry Cleaning Plants, Except Rug Cleaning, 7217-Carpet and Upholstery Cleaning, and 7218-Industrial Launderers; *[Major Group Number 73 (Business Services), only Industry Number 7397-Commercial testing laboratories;]* Major Group Number 75 (automotive repair, services, and garages), only Group Number 753-Automotive Repair Shops; Major Group Number 76 (miscellaneous repair services), only Industry Number 7692-Welding Repair; Major Group Number 80 (health services), only Group Number 806-Hospitals; *[and]* Major Group Number 82 (educational services), only Group Numbers 821-Elementary and Secondary Schools and 822-Colleges and Universities, and Industry Number 8249-Vocational Schools*; **and Major Group Number 87 (Engineering, Accounting, Research, Management, and related Services), only Industry Number 8734-Testing Laboratories***.

8:59-11.4 General information

The general information provisions of N.J.A.C. 8:59-1 shall apply to this subchapter, except for N.J.A.C. 8:59-1.4

8:59-11.5 Trade secrets on labels

Trade secret claims to maintain the secrecy of hazardous substances and the five most predominant substance ingredients on container labels shall be filed in accordance with the procedures set forth in N.J.A.C. 8:59-3, which shall govern all trade secret label claims.

8:59-11.6 Labeling containers

(a) The provisions of N.J.A.C. 8:59-5, which regulate the labeling of containers and pipelines, shall apply to this subchapter.

(b) By March 31, 1990, *[all employers shall comply with the labeling requirements of this subchapter]* ***every container at a private employer's facility shall bear a label indicating the chemical name and Chemical Abstracts Service number of all environmental hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling". Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance.***

[(c) All containers less than one pound are exempt from labeling, unless they contain special health hazard substances.]

8:59-11.7 Enforcement

The provisions of N.J.A.C. 8:59-8, which regulate enforcement of this chapter, shall apply to this subchapter.

8:59-11.8 Right to Know Hazardous Substance List

The provisions of N.J.A.C. 8:59-9, which regulate the Right to Know Hazardous Substance List, shall apply to this subchapter.

8:59-11.9 Special Health Hazard Substance List

The provisions of N.J.A.C. 8:59-10, which regulate the Special Health Hazard Substance List, shall apply to this subchapter.

LABOR

(a)

DIVISION OF EMPLOYMENT SECURITY

1990 Maximum Weekly Benefit Rates
1990 Taxable Wage Base Under the Unemployment Compensation Law
1990 Contribution Rate of Governmental Entities and Instrumentalities
1990 Base Week
1990 Alternative Earnings Test
Adopted Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6, and 1.7.

Proposed: September 5, 1989 at 21 N.J.R. 2700(a).
Adopted: October 16, 1989 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 16, 1989 as R.1989 d.565, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20; 34:1A-3(e); 43:21-3(c); 43:21-4(e); 43:21-7(b)(3); 43:21-7.3(e); 43:21-19(t); 43:21-27; 43:21-40 and 43:21-41.

Effective Date: November 6, 1989.
Expiration Date: August 19, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being $279.00 per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being $261.00 per week.

(c) These maximum benefits shall be effective for the calendar year 1990 on benefit years and periods of disability commencing on or after January 1, 1990.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first $13,900 during the calendar year 1990.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being eight-tenths of one percent (0.8 percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1990.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being $99.00 per week for benefit years and periods of disability commencing on or after January 1, 1990.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being $6,000 for benefit years and periods of disability commencing on or after January 1, 1990.

(b)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Vehicle Modification Requirements
Adopted New Rules: N.J.A.C. 12:45-3

Proposed: August 7, 1989 at 21 N.J.R. 2213(b).
Adopted: October 16, 1989 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 16, 1989 as R.1989 d.564, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:16-20 et seq., 29 U.S.C.A. §701 et seq. and 34 CFR §361.1 et seq.

Effective Date: November 6, 1989.
Expiration Date: May 2, 1993.

Summary of Public Comments and Agency Responses:

The Department did not receive any written comments on the proposed new rules. However, the Department has made minor substantive and technical changes in the text. A summary of the changes is as follows.

The phrase "as an option" has been deleted from N.J.A.C. 12:45-3.7(a)1 for clarity.

N.J.A.C. 12:45-3.12(a)2 has been reworded to avoid offending individuals with handicaps.

The phrase "enclosed and" has been added to N.J.A.C. 12:45-3.12(a)7 for clarity.

The phrase "or reduce the vehicle's OEM structural strength" has been added to N.J.A.C. 12:45-3.12(a)8 to clarify that the structural strength of the vehicle after modification must be equivalent to the strength of the vehicle built by the original manufacturer.

The measurement "1.25 inches" in N.J.A.C. 12:45-3.13(a)1 has been changed to ".125 inches" to correct a typographical error.

The phrase "and labeled" has been added to N.J.A.C. 12:45-3.18(a)3 to clarify that the left foot accelerator must be labeled to inform drivers without handicaps that this accelerator is not intended for their use.

The number "three" has been deleted from N.J.A.C. 12:45-3.23(a)4ii and replaced with the phrase "two or more". The Department made this change because it believes that two bars would provide sufficient reinforcement.

The word "unacceptable" in N.J.A.C. 12:45-3.23(a)12 has been changed to "acceptable" to correct a typographical error. The word

"shall" has also been deleted and replaced with "may". The Department made this change because it believes that some automotive carpet may serve as insulation.

The phrase "24 ounces or less" has been deleted from N.J.A.C. 12:45-3.24(a)1 and replaced with the phrase "a range of 10 to 15 inch pounds". The Department made this change in anticipation of changes to standards used by the SAE (Society of Automotive Engineers). Although the SAE anticipated changes are in draft form, the Department believes the proposed new standards are more appropriate than the current standards.

The number "nine" has been deleted from N.J.A.C. 12:45-3.24(a)6 and replaced with "eight". The change was also made in anticipation of changes to standards used by the SAE. The Department believes that the proposed new standard is more appropriate than the current standard.

The sentence "the end user shall be responsible for the cost of returning the vehicle to OEM specifications" has been added to N.J.A.C. 12:45-3.24(a)9, 3.31(a)8, 3.33(a)7 and 3.34(a)4 to clarify that the Department is not responsible for paying for the cost to return a modified vehicle back to its original manufactured condition.

The phrase "or other appropriate location" has been added to N.J.A.C. 12:45-3.29(a)1. The Department made this change because it recognizes that installation of a center console to the floor is not possible in certain vehicles such as minivans.

The phrase "eight ounces or less" in N.J.A.C. 12:45-3.33(a)1 has been deleted and replaced with the phrase "a range of 1.5 to four inch pounds". This change was made in anticipation of changes in standards used by the SAE. The Department believes that the proposed new standard is more appropriate than the current standard.

The number "nine" in N.J.A.C. 12:45-3.33(a)5 has been deleted and replaced with the number "eight". This change was also made in anticipation of changes to standards used by the SAE. The Department believes that the proposed new standards are more appropriate than the current standard.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 3. VEHICLE MODIFICATION REQUIREMENTS

12:45-3.1 Purpose and scope

(a) The purpose of this subchapter is to establish requirements which will ensure quality of equipment design, fabrication, installation or modification purchased by the State of New Jersey for the mobility impaired. The specifications are not intended to discourage new devices, techniques or equipment but to ensure that mobility impaired residents of New Jersey, who are clients of Division of Vocational Rehabilitation Services (DVRS), receive equipment which is functional, safe, and durable.

(b) Any vendor who contracts with DVRS to perform vehicle modifications shall comply with the requirements set forth in this subchapter.

12:45-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Auto door openers" means using power, usually electric motor, to open rear or side cargo door(s).

"Automatic lift" means a wheelchair lift which has been powered for all modes of operation.

"Automatic wheelchair roof carrier/loader" means a device mounted on the roof of a standard passenger vehicle which loads and stores a manual wheelchair.

"Consoles" means a modular unit which moves OEM switches within range of motion of individual with limited range of motion.

"DMV" means the New Jersey Division of Motor Vehicles.

"DOT" means the United States Department of Transportation.

"DVRS" means the New Jersey Division of Vocational Rehabilitation Services.

"Electrical emergency brake" means the powering of the emergency parking brake due to the fact that the driver cannot apply or disengage it because of physical limitations.

"Extensions" means devices added to required controls, such as turn signals, shift lever, brake pedal, accelerator pedal, etc., to allow use by a disabled driver.

"External switch control box" means outside switches or devices to control lift door and/or wheelchair lift.

"FMVSS" means Federal Motor Vehicle Safety Standard.

"Horizontal steering" means replacement of the original OEM steering column with a modified unit which adjusts with power right and left, up and down, and tilts on various planes to allow wheelchair driver easier entry and exit to driver station, and is prescribed when an individual lacks sufficient strength (and usually range of motion or reach) to make use of a standard size OEM steering wheel.

"Horn/dimmer switches" means movement of control devices to within operational reach of driver using hand controls.

"Instructor's brakes" means a modification employing duplicate brake activator, usually located in area of right passenger seat in a standard passenger vehicle.

"Manual parking brake" means addition of hand lever to the parking brake which allows an individual to engage the brake when they have limited or no use of lower extremities.

"OEM" means original equipment manufacturer and part or component of the vehicle which is identical to the original part or component and is supplied by the manufacturer of the vehicle.

"Powered back-up steering" means a redundant power system for the steering mechanism which is designed to automatically actuate in emergencies such as engine power loss or power steering pump failure.

"Raised fiberglass/roof" means the removal of standard OEM roof on a van, and replacement with molded fiberglass unit to allow greater head room.

"Raised lift entry door" means increasing the height of the side cargo door to allow entry of wheelchair-bound driver or passenger who cannot bend his or her upper body or neck.

"Reduced effort brakes" means a modification which reduces the amount of force necessary to activate the brakes on a motor vehicle with OEM power brakes.

"Reduced effort steering" means a modification which reduces the amount of force necessary to turn the steering wheel of a vehicle equipped with OEM power steering.

"Remote gear shift" means a modification using a cable which allows an individual with limited range or strength to set transmission in a selected gear.

"Rotary lift" means a lift which is automatic and rotates from vehicle rather than folding/unfolding, as in a platform lift.

"SAE" means the Society of Automatic Engineers.

"Semi-automatic lift" means a wheelchair lift which has been powered only in the up/down mode, and not in the fold/unfold mode.

"Six-way powered transfer driver seat base" means a set base which has three modes, up/down; forward/backward; and rotates—clockwise/counter-clockwise, in order to allow a wheelchair user to transfer from a higher or lower position (as appropriate) into or from the driver's seat.

"Special controls" means any specialized custom unit other than standard hand controls and/or vacuum assist, to control gas and brake.

"Standard hand controls" means mechanical devices which use rods or cable to control brake and accelerator of a passenger vehicle for an individual not having use of lower extremities.

"Steering column extension" means the process of bringing steering wheel closer to wheelchair driver via add on or other means.

"Steering devices" means an adaptive item added to a standard vehicle steering wheel to permit steering control when an individual drives with hand controls.

"Vac brake/gas control" means a system employing a servo/slave unit, using vacuum as the source of power, to control brake and throttle when an individual lacks sufficient strength to utilize "standard hand controls."

"Wheelchair flooring" means the use of steel or wood to give a smooth, flat surface for a wheelchair access.

"Wheelchair lowering pan" means a lowering device in driver's station which lowers a driver to a level which gives an adequate field of vision when the individual is driving from a wheelchair.

"Wheelchair tiedown" means a device or devices used to secure a wheelchair in a motor vehicle.

"Zero (no) effort brakes" means a modification similar to reduced effort brakes which gives a greater reduction in force necessary to activate brakes than either standard OEM power brakes or reduced effort brakes modification.

"Zero (no) effort steering" means a modification to OEM power steering which reduces force necessary to turn steering wheel in vehicle to eight ounces or less.

12:45-3.3 Exterior switch control box (SP.1.1)

(a) The requirements for construction and installation of the exterior switch control are as follows:

1. The control box shall be located in such a manner so that opened vehicle doors do not interfere with end user's access to use of switches.

2. The control box shall have a key lock which can be operated by an individual with limited finger dexterity.

3. The control box shall be constructed of rigid plastic, aluminum or stainless steel.

4. The control box shall be secured to vehicle with noncorrosive rivets or equivalent fasteners.

5. The rear of the control box shall be enclosed.

6. The door of the control box shall be constructed of rigid plastic, aluminum or stainless steel.

7. The door of the control box shall have a weather seal to seal out any rain or moisture.

8. All switches shall be the long arm toggle type, securely attached.

9. All switches shall possess a water tight seal to prevent moisture from penetrating below the switch mounting surface.

10. No switch shall extend behind the depth of the control box.

11. All switches shall be minimally located on one and one half inch centers.

12. The working end of each switch should not be set back more than one inch.

13. All switches shall be labeled as to function, order and direction of use.

14. Switches shall control:

i. The lift door;

ii. The unfolding/closing of lift platform; and

iii. The up/down operation of lift platform.

15. The operating surfaces shall be free of sharp edges or burrs.

16. Any radio control system shall have a manual back-up system. Magnetic or other alternative exterior controls, such as magnetic control or switch for opening, may be accepted.

17. If the control box contains a magnetic system, a security cut-off shall be supplied.

18. The security cut-off shall deactivate the exterior switch control system.

19. If the vehicle is used for a non-driving user, the controls may be mounted as a console in the right front seat.

12:45-3.4 Automatic door openers (SP.2.1)

(a) The requirements for construction and installation of automatic door openers are as follows:

1. Door opening devices shall not compromise the mechanical integrity of the fit between the doors and vehicle body.

2. All automatic door openers shall have an interior emergency quick release mechanism in case of power failure or malfunction. The quick-release mechanism shall permit opening and closing of doors (lift) if power fails, to ensure exit.

3. All doors shall be moisture sealed to prevent moisture or water entry when in "full powered" closed position.

4. All doors shall have an override to prevent physical damage and complete closing when lift is extended beyond the side of the vehicle.

5. Automatic lighting shall be installed in conjunction with automatic power doors to illuminate the lowest lift platform position when the auto doors are opened.

6. An automatic interior light shall work in conjunction with the power doors to illuminate the van interior and specifically the lift operating switches just inside the lift door opening.

7. An automatic interior light shall go on when the doors open, and shut off when the doors close.

8. If cable is used on sliding doors, the cable shall be vinyl covered or encased.

9. If chain is used on sliding doors, the chain shall have an insulation strip installed on door to prevent slap or chain wear.

10. The interior emergency quick-release mechanism shall be conspicuously red-tagged.

12:45-3.5 Automatic hydraulic or electric foldout wheelchair lift (SP.3.1)

(a) The requirements for construction and installation of automatic hydraulic or electric foldout wheelchair lifts are as follows:

1. The automatic foldout wheelchair lift shall meet the basic specifications drafted by the U.S. Veteran's Administration (Federal Register Volume 43, No. 96-P21390, 17 May 1978) and/or standards established by the Society of Automotive Engineers (SAE), incorporated herein by reference.

2. The wheelchair lift platform shall be equipped with a safety end gate which is a minimum of three and one-half inches in height.

3. The three and one-half inch end gate shall have a nonslip surface.

4. In the closed position, the end gate shall withstand a distributed force of 1,600 pounds applied parallel to, and three inches above the platform ground plane without opening.

5. The end gate control system shall operate to prevent the safety end gate from opening unless the lift platform is resting securely upon the ground.

6. During raising/lowering, the safety end gate shall be locked in the closed position by a clamp or other industry acceptable manner. The locking and/or release of the clamp shall be by a fail safe mechanical, electrical or hydraulic means.

7. The locking action of the safety end system shall occur before the lift platform reaches a height of six inches maximum above the ground plane.

8. The safety end clamp shall release automatically only as a result of coincidence of the lift platform with the ground.

9. A fail safe element should be incorporated in the lift design so that the lift platform cannot be raised more than six inches from the ground without the safety end gate closed and locked by the system.

10. The outside lip/side edge of the platform shall be a minimum height of two inches.

11. The lift platform shall be a minimum of:

i. 29 inches wide; and

ii. 45 inches in length at a minimum with the safety end gate in the down position, unfolded (open to discharge or to receive the wheelchair). Any exception dictated by the size of the OEM door may be considered.

12. The lift platform shall be constructed to allow the wheelchair-bound user to mount the platform from inside the vehicle by driving their chair forward or from outside by driving the chair forward or backward.

13. The automatic lift shall have a manually operated emergency back-up system to release, lower, and raise the lift if power fails. The back-up system shall be labeled and instructions supplied in the area of operation.

14. The wheelchair lift shall remain stationary in the fully closed position unless activated by the controls.

15. The raising or lowering of the lift platform shall be positive. Lift downward drafting shall be unacceptable.

16. All hydraulic reservoirs of the automatic lift shall be equipped with a dipstick or sight gauge to ascertain fluid levels. A pressure gauge may be included.

17. The lift platform and all exposed structure shall be treated with a coating to prevent corrosion for a period of three years under normal usage.

18. The automatic lift shall have a safety switch to prevent the lift from opening if the doors are closed.

19. The automatic lift shall have a control handrail with a switch to control the horizontal operation of the lift by the wheelchair user.

20. The control switches for the lift and auto doors shall be located inside of the vehicle adjacent to the door opening through which the lift operates.

21. All electric motors and hydraulic pumps shall be covered to prevent exposure to client or other passengers.

22. The control switches for the automatic lift shall be the long arm toggle type switches or pressure contact switches spread apart so that a high level C-5 Quad may utilize them.

23. All lift control switches shall be marked as to function and direction of operation.

24. All connecting hydraulic lines shall not exceed the width of a folded lift or control stanchion box.

25. The warranty for the anticorrosive treatment shall be in writing on the manufacturer/installer's letterhead and signed by an officer of the manufacturer/installer's company when the user or purchaser is a State agency.

26. The manufacturer/installer shall certify in writing that the lift meets the general specifications as noted in (a)1 above. If the lift has not been tested by the Veterans Administration at Texas A & M University, then a private independent engineering test certified by an independent qualified engineering firm will suffice. A copy of the report shall be filed with the DVRS Office of Vehicle Modification within 10 days of the DVRS request for a clarification of meeting (a)1 above.

12:45-3.6 Semi-auto lift (SP.3.2)

(a) The requirements for construction and installation of semi-auto lifts are as follows:

1. Semi-auto lifts shall meet the same standards set forth in N.J.A.C. 12:45-3.5(a)1, 3, 4, 5, 10, 11, 13, 14, 15, 16, 17, 21, 23, 24, and 25.

2. The lift shall unfold from vertical position to horizontal and vice versa by hand.

3. The end flap shall be opened by and resecured by the attendant.

4. The tether cord shall be supplied with switches to control the up/down motion of the lift platform.

5. The stationary position of the tether cord when not in use, shall be marked (place cord here) so that the unit cannot be entangled in the lift mechanism.

6. The pressure required to close the wheelchair platform from the horizontal to the vertical position shall not exceed more than 35 pounds.

12:45-3.7 Rotary lifts (SP.3.3)

(a) The requirements for construction and installation of rotary lifts are as follows:

1. Rotary lifts which meet the general Veteran's Administration specifications are acceptable *[as an option]*.

2. All the requirements for an automatic lift (N.J.A.C. 12:45-3.5) shall also pertain to a rotary except N.J.A.C. 12:45-3.5(a)11, 16 and 24.

12:45-3.8 Wheelchair flooring (SP.4.1)

(a) The requirements for construction and installation of wheelchair flooring are as follows:

1. Wheelchair flooring shall be either plywood or flat steel plate.

2. If plywood is used, the plywood shall be either marine or exterior grade at least three-eighths of an inch in thickness.

3. If flat steel plate is used, the plate or sheet shall be a minimum of 16 gauge galvanized steel.

4. Plywood or steel flooring shall be securely fastened to vehicle ensuring no movement.

5. Covering material shall be low-pile commercial carpet or indoor/outdoor carpet securely fastened to wheelchair flooring.

6. If carpet is not supplied, nonskid material shall be supplied (such as RCA Rubber) with prior notification as an option.

7. Wheelchair flooring shall cover entire floor of vehicle, excluding engine box and right front passenger seat area, unless specified.

8. Filling of driver's step well shall be included as part of wheelchair flooring.

9. Plywood sub-floor is not required on a dropped floor as long as the dropped floor has heat shielding over the catalytic converter exhaust pipe and muffler to prevent the transmission of excess heat to the dropped floor.

12:45-3.9 Extension of wheelchair floor

(a) The requirements for the extension of the wheelchair flooring are as follows:

1. Extension of the wheelchair floor shall be of same material as set forth in N.J.A.C. 12:45-3.8(a)1 through 6.

12:45-3.10 Standard hand controls (SP.5.1)

(a) The requirements for construction and installation of standard hand controls shall be as follows:

1. All standard hand controls shall meet the specifications drafted by the Veteran's Administration (VAPC-A-75058) 31 March 1978 and/or standards established by the SAE, incorporated herein by reference.

2. Standard hand controls may be of three types:

i. Push/Right Angle Push (SP.5.2(b));

ii. Push/Pull (SP.5.2(a)); or

iii. Push/Twist (SP.5.2(c)).

3. The type of standard hand control selected depends on the individual's functional limitation.

4. No modifications shall be made to carburetor, carburetor springs or fuel injection system.

5. All installed standard hand controls shall be securely fastened.

6. No standard hand controls shall be mounted on a vehicle lacking power brakes, power steering and automatic transmission.

7. Standard hand controls as installed shall be capable of full throttle.

8. Standard hand controls shall be installed so that during operation there is no interference with any parts of the vehicle or driving system in any motion or combination of motions.

9. Standard hand controls should be installed so as not to interfere with a nonhandicapped operator as dictated by vehicle OEM design.

10. Any return forces needed to counteract the weight of the hand control shall be made at or near the hand control.

11. All fulcrum pins located at various pivot points shall be case hardened, and shall be secured with castilated and pinned nuts or self-locking nuts.

12:45-3.11 Steering column extension (SP.6.1)

(a) The requirements for construction and installation of the steering column extension are as follows:

1. The steering column extension shall not interfere with the normal collapsibility of the steering column as governed by FMVSS.

2. The steering column extension may be integral or add on. If add on, the steering column extension shall be of polished/brushed aluminum, stainless steel or chrome plated steel.

3. The length of the extension shall be determined by the physical needs of the handicapped individual.

4. The bolts securing the add on extension shall be equal to, or of OEM quality, to ensure proper securement according to acceptable safety standards.

5. Steering columns which have been extended either by the integral modifications or add on spacers, shall be equivalent functionally and structurally to the original column as supplied by the OEM manufacturer.

12:45-3.12 Wheelchair lowering pan

(a) The requirements for construction and installation of the wheelchair lowering pan are as follows:

1. A powered wheelchair lowering pan shall be capable of positioning the wheelchair-bound driver at their optimal height for driving.

2. The optimal height for a *[wheelchair-bound]* driver shall be determined by the physical needs of the individual *[with handicaps]* ***using the wheelchair***.

3. The entry to the wheelchair lowering pan shall have a nonskid surface.

4. The lowered pan area shall be welded together with a continuous bead and welded to vehicle body in a manner consistent with acceptable welding standards.

5. The lowered pan area shall be waterproof, and sealed.

6. The entire lowered pan unit must be rustproof and the underside coated with an automotive type undercoating material. The installer shall supply documentation of this requirement.

7. Any device or unit used to power the pan shall be ***enclosed and*** protected to prevent moisture or water damage.

8. Any undercarriage modification necessary to install the lowering mechanism shall not compromise the integrity of the vehicle's structural frame ***or reduce the vehicle's OEM structural strength***.

9. On any vehicle with a separate frame, the drop pan shall not be attached to the frame except in a manner consistent with the concept and design of the OEM's attachment.

10. On a van, the longitudinal frame member shall not be modified unless it is restored to the original strength of the OEM unit and is of comparable design.

11. The entire lowered pan and attachment area shall be waterproofed, sealed, primed and painted inside and out prior to undercoating with required ziebart material or automotive equivalent.

12. Only steel shall be used in pan fabrication. The gauge must be a minimum of 12 gauge.

13. Frame cutting is not allowed. An exception can be requested if no alternative is available and the frame cutting has been recommended by a driver evaluation as absolutely necessary to insure safe driving. The recommendation shall be in writing.

i. If an exception is recommended and approved, the method shall be certified by the installer that the frame modification is statically and structurally sound as the original unmodified vehicle as was delivered by Ford, GMAC, or Chrysler Corp. The certification shall be in writing. Documented testing may be requested.

(b) The standards for construction and installation of dropped floors (SP.7.2) is as follows:

1. A dropped floor may be requested only on a vehicle with a separate body and chassis.

2. In a dropped floor proposal, N.J.A.C. 12:45-3.12(a)4 through 13 shall also apply.

3. Coverings shall be low-pile commercial grade carpet, which is flame retardant and fire resistant.

4. All dropped floors shall have heat shielding over catalytic converter exhaust pipe and muffler, to prevent transmission of excess heat to dropped floor.

5. An auxiliary tank shall have heat shielding over catalytic converter exhaust pipe and muffler, to prevent the transmission of excess heat to the dropped floor.

6. Dropped floors must be minimally fabricated out of 12 gauge steel. No other material, other than steel, is acceptable.

7. In vehicles without a separate body and frame (unibody, monobody, etc.), a dropped floor may be requested. The manufacturer shall certify (that is, professional engineer review) that the floor modification is as structurally sound as original OEM unmodified vehicle.

8. If the fuel tank has been relocated by modification, the modification manufacturer shall recertify the fuel system integrity (FMVSS 301 and 302) in writing with sign-off by a professional engineer.

9. The relocated tank shall be structurally encased.

10. The relocated tank shall be heat shielded from any exhaust pipe and muffler.

11. In any front wheel drive floor modification, an additional external transmission cooler shall be installed.

12. In all dropped floors, the vehicle's original strength shall be maintained. All body or frame cross members shall be retained or replaced in a manner similar to original design.

12:45-3.13 Wheelchair tiedowns (SP.8.1)

(a) The requirements for construction and installation of wheelchair tiedowns are as follows:

1. All wheelchair tiedowns shall be through-bolted into a structural member or sheet metal of at least 16 gauge, which has been securely attached (that is, through-bolted or welded) to the remainder of the body. All fasteners shall have washers of at least two inches in diameter and *[1.25]* ***.125*** inches in thickness, or the equivalent steel plating.

2. All wheelchair tiedowns shall be designed to be stable for normal driving and to secure the wheelchair during impacts.

3. A driver's wheelchair tiedown system (SP.8.1(f)) shall be designed so that the end user employing the system can independently maneuver the wheelchair into and out of the driving position, secure the tiedown, and be able to determine that it is secure. If the driver's wheelchair tiedown is electrically or hydraulically powered, a manual release shall be supplied in case of a power failure. The manual release shall be conspicuously red-tagged.

4. Wheelchair tiedowns (intended for use when the wheelchair is occupied) shall not be attached to any part of the wheelchair designed for easy removal (for example, footrests or armrests).

5. All vehicles equipped with transfer seats shall have transfer tiedowns (SP.8.1(e)) to secure the unoccupied wheelchair. The transfer seats shall be placed in such a position to allow adequate driver transfer.

6. A driver's wheelchair tiedown (SP.8.1(f)) in conjunction with a safety belt system shall keep the wheelchair and occupant securely restrained in the driver's station in the event of a 30 miles per hour (mph) frontal collision into an immovable barrier. For the purpose of this requirement, the de-acceleration level present at the floor of the vehicle during the 30 mph collision shall be 20G's ($G=32.2$ ft/sec^2).

i. Manufacturers or installers may be required to produce documentation of their drive tiedown meeting the 30 mph, 20G criteria when tested dynamically on an impact sled simulator equal to the sled facility at the Highway Safety Research Institute, University of Michigan.

ii. Documentation shall be a copy of successful attainment criteria of standard at the University of Michigan or a notarized report by a licensed mechanical engineer or independent engineering test facility, that the tiedown has been fully tested under identical conditions as University of Michigan, and has successfully attained the required criteria at 30 mph, 20G set by the University of Michigan in the accepted configuration used for driving.

7. With regard to nondriver wheelchair tiedown placement, the preferred wheelchair tiedown position shall place the nondriver parallel to the sides of vehicle, facing forward.

8. A safety belt system shall be provided at each passenger or driver occupied wheelchair tiedown location.

9. All safety belt systems shall be installed per FMVSS 209 and 210, incorporated herein by reference, and attached to the van.

10. The safety belt system shall be accessible and independently operable by the intended handicapped driver.

i. Where practical, the safety belt system shall apply to nondriver wheelchair-bound passengers.

11. Chest straps or other restraints may be required as determined by the driver's physical needs.

12. Passenger wheelchair tiedowns for a nondriver (SP.8.1(p)) shall meet the criteria established by University of Michigan Transportation Sled Testing.

13. Wheelchair tiedowns in private passenger vehicles and private custom vans shall be forward-facing.

14. Tiedowns which meet the criteria established by the University of Michigan (30 mph, 20G) may be used as a passenger tiedown, in lieu of the four point tiedown.

15. All driver tiedowns shall have a labeled manual release within reach of the driver.

16. All driver tiedowns shall have a visual signal to indicate "Locked in Place."

17. Any tiedown which has not been dynamically tested and attained a criteria of 30 mph, 20G without bending, breaking or prematurely releasing shall not be accepted. The dynamic testing and success of the listed criteria shall be in writing. Documentation may be required to assure compliance.

12:45-3.14 Electric parking brake (SP.9.1)

(a) The requirements for construction and installation of an electric parking brake are as follows:

1. The power parking brake shall be installed so that it is free from all mechanical interference and the cables will not be obstructed by the power pan (if on vehicle).

2. The control switch for power parking brake shall be clearly marked as to the engaged and disengaged positions.

3. Electrical cables for electric parking brake shall be firmly secured to vehicle undercarriage by an automotive metal clamp with

vinyl insulator ties capable of withstanding harsh and abusive weather and road conditions.

4. The operating switch shall be installed on a console location or other location according to the driver's physical needs.

12:45-3.15 Manual brake extension (SP.10.1)

(a) The requirements for construction and installation of the manual brake extension are as follows:

1. A non-powered brake extension shall meet the specification established by the Veteran's Administration (M-2 Part IX G-9) published March 31, 1978, incorporated herein by reference.

2. An extension shall be positioned by the installer so that it can be operated safely and efficiently by handicapped or mobility impaired driver, taking into account the OEM dash design.

12:45-3.16 Steering wheel devices (SP.11.1)

(a) The requirements for construction and installation of steering wheel devices are as follows:

1. Only devices which meet the Standards set by Veteran's Administration (M-2 Part IX G-9) published March 31, 1978 and periodically updated shall be accepted.

2. Steering wheel devices which shall be considered acceptable are as follows:

i. Spinner Knob (SP.11.2(a));
ii. Sierra Driving Ring (SP.11.2(b));
iii. Quad Cuff (SP.11.2(c));
iv. Quad Bipin (SP.11.2(d));
v. Quad Tri Pin (SP.11.2(e)); and
vi. Quad Flat Bipin (SP.11.2(f)).

3. All steering devices shall be securely fastened. Quick release cross bars are not acceptable unless the manufacturer guarantees in writing that the item will not disengage inadvertently. A permanently fastened cross bar may be accepted if it is prescribed due to physical condition.

4. All steering devices shall be removable for compliance and used by a driver with a non-restricted license. Only case-hardened pins and/or knurled fasteners shall be acceptable.

12:45-3.17 Extensions (SP.12.1)

(a) The requirements for construction and installation of extensions are as follows:

1. All extensions shall be securely fastened.

2. All extensions shall be positioned so that the driver can easily operate without difficulty, taking into account accepted safety practices.

3. All extensions shall have sufficient strength to withstand the stresses incurred under general conditions of operation.

4. All extensions shall be constructed and installed, so as to maintain the normal function of control.

12:45-3.18 Left foot accelerator (SP.12.3)

(a) The requirements for construction and installation of the left foot accelerator are as follows:

1. The left foot accelerator shall have the capability of inactive placement when not needed for the mobility impaired.

2. The left foot accelerator shall be fastened, attached and secured in an acceptable manner.

3. The installation shall be identified ***and labeled*** for "Non-intended" user.

4. The weight of the left foot activator shall not cause the accelerator to engage at higher revolutions per minute (RPM) than the "standard" neutral/drive position RPM.

5. The left foot accelerator shall give sufficient clearance for the appropriate operation of a standard foot brake by the driver operator.

6. The installation should not interfere with operation of standard foot brake and OEM accelerator by an able-bodied driver based on the vehicle OEM design.

12:45-3.19 Horn/dimmer switches

(a) The requirements for construction and installation of horn/dimmer switches are as follows:

1. Each horn/head light dimmer shall be installed and positioned to allow a driver to actuate the switch without removing his or her hand from the standard driving controls.

2. No horn/dimmer switch shall be installed in such a manner which would cause the driver to jerk, pull or move his or her steering hand.

12:45-3.20 Mirrors (SP.13.4/5)

(a) The requirements for construction and installation of mirrors are as follows:

1. A multi-view mirror (SP.13.4) shall not compromise the driver's forward vision.

2. Remote mirrors (SP.13.5) shall be installed in an appropriate manner.

3. Switches for remote mirrors shall be positioned for a setting on the console or any other accessible location for the mobility impaired driver.

12:45-3.21 Six-way powered transfer driver seat base (SP.14.1)

(a) The requirements for construction and installation of a six-way powered transfer driver seat base are as follows:

1. The six-way powered transfer driver seat base shall have the capability of electrically powered movement:

i. Up/down;
ii. Back/forward; and
iii. Rotate right/left.

2. The six-way powered transfer driver seat base shall have electrical connections of the plug type or other Underwriters Laboratories acceptable positive electrical securement method.

3. The six-way powered transfer driver seat base shall be secured with automotive type bolts (OEM type used for seat fastening in vans) held firmly in place with nyloc nuts or an industrial equivalent.

4. The six-way powered transfer driver seat base shall be bolted through into a cross member or sheet metal of at least 16 gauge which has been securely attached (that is, through-bolted or welded) to the remainder of the body and fish-plated for stress distribution.

5. All wires shall be protected when the seat moves in any given direction against entanglement or possible disengagement.

6. The six-way powered transfer driver seat base shall be securely fastened to driver's van seat with automotive type bolts unless a special driver's seat is required by the DMV attached licensed endorsement.

7. Seat cushions shall allow maximum utilization of height/lowering capability of driver base, to ensure proper end user transfer.

8. Installation position shall allow maximum utilization of forward/backward travel of seat cushion to ensure most appropriate transfer position for end user.

9. The controls shall be placed to permit convenient, efficient and safe utilization by the driver, taking into account the driver's physical limitations.

10. All control switches shall be long arm toggle type or pressure contact switches. Switches shall be mounted on long tether cord to ensure access for the mobility impaired driver.

11. Switches shall be labeled as to their function and direction of use.

12. The seat base shall be free from excessive wobble or flexing, giving driver adequate support as required by end user's physical disability.

13. The six-way powered transfer driver seat base shall be mounted in a manner consistent with FMVSS 207, incorporated herein by reference, or minimum of one-half inch grade 5 bolts, back-plated with washers of minimum one and one-half inch outside diameter.

14. Six-way power switches shall be accessible to the disabled driver when seated both in the seat base and in the wheelchair at the transfer location.

15. No six-way powered transfer seat base shall compromise its forward or rearward distance capability in its up/down sequence.

16. Every four-way powered transfer seat base and right side transfer seat base shall be constructed and installed pursuant with all previous provisions to the standards set forth in this section.

17. Every custom seat shall meet general automotive industry accepted practices for seat construction and applicable FMVSS standards, incorporated herein by reference.

18. Supplemental cushions shall have velcro material on the bottom and a fixed seat surface to reduce "Inadvertent movement."

19. A transfer driver seat base (SP.14.1(t)) shall be required for all wheelchair drivers. The transfer driver seat base shall have wheels and be mounted pursuant to (a)1 above.

12:45-3.22 Raised lift entry doors (SP.15.1)

(a) The requirements for construction and installation of raised lift entry doors are as follows:

1. Extended doors and door frames shall be braced in a manner consistent in strength to the original door and doorway.

2. Refinishing shall be equal to original automotive finish.

3. All paint work shall be according to American Auto Body Association standards, incorporated herein by reference.

4. No air or water leaks under air or water hose pressure shall be acceptable.

5. No exposed burrs or sharp metal edges shall be acceptable.

6. All metal shall be thoroughly clean, properly primed, and corrosion treated prior to installation and final finishing. The contractor shall provide documentation.

12:45-3.23 Raised fiberglass roofs (SP.16.1)

(a) The requirements for construction and installation of raised fiberglass roofs are as follows:

1. Any van which has had the factory top removed shall have structural reinforcement added to compensate for the reduced structural rigidity.

2. The structural reinforcement design shall be primarily aimed at restoring rigidity to the van body.

3. The structural reinforcement may also serve as a roll bar.

4. The structural reinforcement shall be composed of two horizontal bars.

i. One bar shall be mounted forward of the side doors. The other shall be mounted aft of the door opening.

ii. The front and rear bar shall be connected by *[three equal]* ***two or more equally*** spaced bars running parallel to sides of the vehicle at the new roof line prior to mounting of fiberglass top.

5. All bars shall be steel tubing one inch by one inch of minimum 14 gauge.

6. Tubing of structural reinforcing shall be welded together and fastened to one inch by one inch steel tube header (a minimum of 14 gauge) installed along top interior sides of the van to which the reinforcement is attached. The reinforcing structure shall be tied to the vehicle's main body structure.

7. All bars shall be encased in rubber, carpet or other sealer to prevent slap against fiberglass top.

8. Front and rear bars fastened to side header shall be fastened in such a manner to prevent front or rear shearing in rollover.

9. Side bars shall be tied to the original van structure.

10. All main frames removed shall be replaced.

11. Other structural designs may be considered on an individual basis.

12. The interior roof insulation and lining shall be supplied unless deleted by the user. Customized carpet *[shall]* ***may*** be *[un]*acceptable.

13. The lining shall be OEM automotive grade.

14. The exterior shall be painted to match the OEM vehicle.

15. The fiberglass roof shall meet the acceptable Recreational Industry Vehicle Association strength standard for possible rollover, incorporated herein by reference.

12:45-3.24 Reduced effort steering (SP.17.1)

(a) The requirements for construction and installation of reduced effort steering are as follows:

1. Reduced effort steering shall reduce effort to *[24 ounces or less]* ***a range of 10 to 15 inch pounds*** (standard OEM wheel) to qualify as reduced effort steering.

2. The manufacturer shall set forth the force necessary (with its product) to turn the wheel on dry asphalt with tire pressure and type of tire defined.

3. The manufacturer shall set forth on the invoice, the type and source of modification done to achieve the reduced effort steering, and the actual force value necessary to turn vehicle's steering wheel.

4. The steering wheel shall have maximum of four turns lock to lock.

5. Modified steering shall not require frame cutting.

6. Only steering wheels (preferably deep dish) fully padded from *[nine]* ***eight*** inches to 16 inches shall be acceptable.

7. Back-up steering shall be required in all modifications requiring reduced effort or zero effort steering.

8. Back-up steering shall be required in all cases where a smaller than OEM original wheel is prescribed as necessary.

9. Reduced effort steering shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device ***The end user shall be responsible for the cost of returning the vehicle to OEM configuration.***

12:45-3.25 Reduced effort brakes (SP.18.1)

(a) The requirements for construction and installation of reduced effort brakes are as follows:

1. Reduced effort brakes shall reduce force to 11 ft/lb or less to qualify as reduced effort brakes.

2. The manufacturer shall set forth on the invoice the force needed to operate the brakes for a rapid stop (that is, just prior to or at initiation of wheel lock-up) on dry asphalt at 30 mph.

3. The manufacturer shall set forth on the invoice the type and source of modification.

4. The manufacturer shall use lines, hoses and other components identical or equivalent in performance to original equipment, and meet all applicable FMVSS on all brake system modifications, incorporated herein by reference.

5. Reduced effort brakes shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

6. A reserve system shall be required for all vehicles containing brake modifications. (SP.18.2)

12:45-3.26 Remote gear shift (SP.19.1)

(a) The requirements for construction and installation of remote gear shifts are as follows:

1. The remote gear shift shall be mounted in driving console, usually center console.

2. Each position, reverse, neutral and drive shall have lighted visual signals.

3. The reverse position shall have an audio signal that notifies the driver that the vehicle's transmission is in reverse.

4. All transmission positions shall have positive stop.

5. The lighted visual signal for reverse shall be red.

6. The lighted visual signal for neutral shall be amber or orange.

7. The lighted visual signal for drive shall be green.

8. The lever or handle shall be designed so that the shift lever or handle is readily usable by a paraplegic or quadriplegic with limited dexterity.

9. The design of the lever or handle shall take into prime consideration safe and efficient driving standards and the physical limitations of the driver.

10. Lighted visual signals shall not be required if shift quadrant remains on column and is in a position to be visible to both a disabled and non-disabled driver.

11. The remote gear shift shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

12:45-3.27 Power windows (SP.20.1)

(a) The requirements for construction and installation of power windows are as follows:

1. Power windows shall be of either the add-on or integral type.

2. The driver's physical limitations shall determine which type product is acceptable.

3. All switches in the console shall be placed so as not to reflect in the driver's eyes when driving.

12:45-3.28 Door consoles (SP.21.1)

(a) The requirements for construction and installation of door consoles are as follows:

1. A door console shall be securely fastened to the driver's door with automotive type rivets or similar fasteners.
2. All switches shall be labeled as to function and direction of operation.
3. A door console shall be constructed of fiberglass, aluminum or stainless steel.
4. All edges on the door console shall be curved or padded.
5. The entire housing of the door console shall be enclosed and sealed against moisture and water entry.
6. All switches shall be of long toggle type securely fastened at the top and bottom. Contact pressure switches shall be acceptable if they are useable by the driver.
7. The console wiring harness shall be properly secured and grommeted at entry into housing.
8. The housing cover shall be easily removeable for trouble shooting.
9. The arrangement of switches shall be in a manner consistent with the operational need in changing terrain, taking into account the driver's physical limitations, safety and driving efficiency.
10. All switches shall be positioned to be easily utilized by an individual with limited hand and/or finger dexterity and as such, shall be spread apart at a distance to ensure proper driver utilization.
11. Electronic consoles shall be acceptable if they comply with requirements of this section.
12. All switches shall be identified.

12:45-3.29 Center consoles (SP.22.1)

(a) The requirements for construction and installation of center consoles are as follows:

1. All center consoles shall be properly secured and braced to the floor of the vehicle ***or other appropriate location***. Any quick release system for servicing shall have a locking pin or device.
2. All required switches shall be listed on request on invoice.
3. All center consoles shall be at a specific height to ensure proper utilization by the driver, taking into account the driver's physical limitations.
4. The requirements of N.J.A.C. 12:45-3.28(a)1 through 10 shall apply to center consoles.
5. All center consoles shall have knock away feature to reduce driver contact in the event of a collision.

12:45-3.30 Quad key rings (SP.23.1)

(a) The requirements for construction and installation of quad key rings are as follows:

1. All quad key rings shall allow utilization and ensure key operation by an individual with little hand dexterity.

12:45-3.31 Horizontal steering (SP.24.1)

(a) The requirements for construction and installation of horizontal steering are as follows:

1. The steering wheel shall have no more than four turns lock to lock.
2. A horizontal steering shall not compromise the collapsibility of the steering column or the telescoping safety feature of OEM manufacturer's unit.
3. If the original steering column is removed from vehicle, then the replacement steering column shall have the same collapsibility feature as the OEM column.
4. The horizontal steering system shall have the capability of being consistently set at a position beneficial to the driver.
5. The horizontal steering unit from dash to wheel including any replacement smaller diameter steering wheel shall be fully padded.
6. All horizontal steering columns shall be powered up and down with a switch located so that an individual with little dexterity can reach and utilize the switch with relative ease.
7. Horizontal steering shall be installed only under a manufacturer's supervision.
8. Horizontal steering shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device. The OEM removed components shall be returned with the vehicle. ***The end user shall be responsible for the cost of returning the vehicle to the OEM configurations.***

12:45-3.32 Powered back-up steering (SP.25.1)

(a) The requirements for construction and installation of powered back-up steering are as follows:

1. All powered back-up steering shall activate automatically in the event of an engine power failure, stall, a wet power steering belt, lower pressure or a damaged power steering belt.
2. Upon activation of the powered back-up steering, the driver shall receive an audio and visual notification that system has been activated.
3. The powered back-up steering system shall have the capability of being pre-tested prior to need to ensure that the system is functioning.
4. The powered back-up steering system shall have a manual override system safety switch.
5. The manual override safety switch shall be mounted on the same side as the driver's brake/accelerator control.
6. All control relays shall be similar or equal to standard automotive industrial relays.
7. All relays shall be mounted to ensure reasonable freedom from vibration/moisture failure.
8. All hoses, lines, fittings shall be of OEM quality/standard or superior.
9. The hydraulic pump shall be of similar quality as used in wheelchair lifts or a similar automotive utilization.
10. Powered back-up steering system shall allow a minimum of 180 seconds use under the most adverse emergency condition.
11. The back-up steering system shall meet the general specifications determined by the Veteran's Administration in their Texas A & M Testing Program, incorporated herein by reference.
12. Back-up steering (SP.25.1) is required in all wheelchair user vehicle modifications.

12:45-3.33 Zero/no effort steering (SP.26.1)

(a) The requirements for construction and installation of zero/no effort steering are as follows:

1. Zero/no effort steering shall reduce the torque effort at the standard steering wheel to *[eight ounces or less]* ***a range of 1.5 to four inch pounds*** to qualify as zero/no effort steering and should be matched to the use in the pre-fitting.
2. The manufacturer shall set forth on the invoice the torque necessary for its product to turn the wheel on dry asphalt with tire pressure and type of tire defined.
3. The manufacturer shall state on the invoice the type and source of modification done to achieve the zero/no effort steering and the actual torque force necessary to turn the vehicle's steering wheel.
4. The steering wheel shall have a maximum of four turns lock to lock.
5. Only steering wheels (preferably deep dish) fully padded from *[nine]* ***eight*** inches to 16 inches shall be acceptable.
6. Back-up steering shall be required in all modifications requiring reduced effort or zero/no effort steering.
7. Zero/no effort steering shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device. ***The end user shall be responsible for the cost of returning the vehicle to the OEM configuration.***

12:45-3.34 Zero/no effort brakes (SP.27.1)

(a) The requirements for construction and installation of zero/no effort brakes are as follows:

1. Zero/no effort brakes shall reduce force to seven ft/lb or less to qualify as zero/no effort brakes.
2. N.J.A.C. 12:45-3.25(a)2 through 4 shall apply to zero/no effort brakes.
3. A back-up reserve brake system shall be required on all zero/no effort brakes.
4. Zero/no effort brakes shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device. ***The end user shall be responsible for the cost of returning the vehicle to the OEM configuration.***

12:45-3.35 Special controls (SP.28.1)

(a) The requirements for construction and installation of special controls are as follows:

1. All special controls shall be examined by the Division of Motor Vehicles for safety.
2. Special hand controls shall be defined as any specialized custom unit other than:
i. Standard controls;
ii. Vacuum-assist (SP.29.1); and
iii. Pneumatic controls (SP.28.2).
3. Foot steering shall be classified as a special control and shall be examined on an individual basis by the DMV.
4. Special controls shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

12:45-3.36 Vacuum brake/gas system (SP.29.1)
(a) The requirements for construction and installation of a vacuum brake/gas system are as follows:
1. All vacuum brakes/gas systems shall be examined on an individual basis.
2. All vacuum brakes/gas systems shall have minimum travel to operate.
3. All vacuum brakes/gas systems shall have capability of custom resistance settings.
4. All vacuum brakes/gas systems shall be closed loop with an emergency reserve in case of engine failure.
5. All vacuum brakes/gas systems shall have precheck operational capability with visual monitoring.
6. All vacuum brakes/gas systems shall have an audio and visual warning in case of malfunction.
7. All vacuum brakes/gas systems shall have an integral emergency back-up in case of engine failure.
8. A vacuum brake/gas system tank shall be minimum of 14 gauge steel.
9. Air valves shall be lapped spool and sleeve construction or other commonly accepted industrial practices to ensure reliability.
10. The handle shall have the capability of adaption for quad knobs and specific limits.
11. All bearings shall be sealed with bronze oil-lite bushings or industrial equivalent.
12. All housings shall be corrosion resistant.
13. All cables shall be corrosion resistant with at least a 420 pound breaking strength.
14. In most cases, a vacuum brake/gas system shall be installed in conjunction with the horizontal steering. The manufacturer of the horizontal steering shall supervise the installation.
i. A written certification of compliance may be required.
15. A back-up brake reserve shall be required on all vacuum brake/gas systems.
16. A vacuum brake/gas system shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device.

12:45-3.37 Air brake/accelerator servo systems (SP.28.2)
(a) The requirements for construction and installation of air brake/accelerator servo systems are as follows:
1. All air brake/accelerator systems shall be examined on an individual basis.
2. Pneumatic shall be equipped with an air reservoir safeguarded by check valves or equivalent devices so that the reservoir is not depleted in the event of a failure or leakage in connections to the source of compressed air.
3. The air reservoir shall comply with SAE Standard J10 Sep. 80, incorporated herein by reference.
4. The air brake/accelerator servo system air hose and hose assemblies shall comply with SAE Standard J1402 Oct. 80, incorporated herein by reference.
5. It shall be equipped with proportional driver controls which require minimum travel to operate.
6. It shall be equipped with an air pressure gauge which indicates to the driver the pressure in pounds per square inch available for braking.
7. It shall be equipped with a device that provides a readily audible warning to the driver whenever the pressure of the compressed air in the primary or back-up system is below one-half of the compressor governor cutout pressure.
8. It shall be completely equipped with an independent emergency reserve device which will provide sufficient energy for at least one full brake application in case of failure of the primary brake actuating mechanism.
9. The compressed air supply line from air operated reserve devices shall be connected to the primary system as close as is practicable to the brake actuating unit. The junction of the primary and back-up system shall be equipped with check valves which protect either system from air losses caused by failure of the primary system.
10. The primary air reservoir shall have a volume which is not less than 12 times the volume of the brake actuating device.
11. The air brake/accelerator servo system shall have precheck operational capability with visual monitoring.
12. Air valves shall be lapped spool and sleeve construction or other industry accepted practice to ensure reliability.
13. A control handle shall have the capability of adaption for quad knobs and specific limits.
14. All bearings shall be sealed.
15. All housings shall be corrosion resistant.
16. Air brake/accelerator servo systems shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device.

12:45-3.38 General electrical specifications
(a) The requirements for construction and installation of general electrical systems are as follows:
1. All switches in the driver's compartment shall meet the requirements of FMVSS 101, incorporated herein by reference.
2. All wiring shall be automotive stranded type and color coded with no wires of the same color in the same loom or harness.
3. All wiring to the same equipment shall be grouped together and protected by an aircraft type loom to withstand abrasion.
4. Wire size shall be sufficient to minimize voltage drop (maximum five percent) and to prevent overheating.
5. All wiring shall have sufficient slack to accommodate the normal motion of parts or equipment to which it is attached.
6. All wiring shall be supported and located to prevent enmeshing in moving parts.
7. All wiring under the vehicle shall be in an encased loom and attached to the vehicle every 18 inches so as not to chafe or swing more than four inches in any given direction. These wires shall not be fastened to the brake or fuel lines. The loom shall be fastened with metal insulated rubber or vinyl clamps.
8. All wire passing near mufflers, exhaust pipes, exhaust manifold and catalytic converters shall be shielded and rerouted if possible.
9. No wires shall pass within two inches of a muffler, exhaust pipe, exhaust manifold and catalytic converter.
10. All holes through which wires pass shall be grommetted (top and bottom).
11. All holes through which wires pass shall be water and moisture sealed.
12. Each electrical circuit shall have a self-resetting circuit breaker close to the power supply. Fuses or fused wire is unacceptable.
13. All circuits protected by self-resetting circuit breakers shall be labeled at the switch as being protected in that manner.
14. If a circuit can be subject to a temporary, inadvertent overload an override emergency switch within reach of the driver but protected by a second nonself-resetting circuit breaker, is mandatory.
15. Adequate provisions shall be made by the installer for proper grounding of electrical equipment and fuel system.
16. All additional wiring shall be to a terminal (bus bar) with only one wire to the main terminal from the battery (usually at the solenoid).
i. The primary cable shall be large enough to carry all additional loads, per specifications.
ii. No more than two wires can be attached to each terminal on the terminal strip.
17. All electrical connections and terminals shall utilize crimp connectors of the type which crimp the insulator as well as the wire.

18. All main power connectors for #0 or larger wire shall use swaged rather than crimped fittings.

19. All wires between the van body and doors shall be properly harnessed, protected and grommetted to prevent chafe, work hardening, pinching and related problems caused by the motion.

20. Any added electrical systems which must be activated by the ignition switch shall protect the ignition switch by having them (electrical systems) routed through a relay.

21. The preferred wiring material shall be copper. If aluminum is used, the appropriate wiring methods shall be utilized to prevent oxidation and cold flow difficulties or other complications.

22. If dual batteries are specified, the second battery shall be placed in the engine compartment. If the battery cannot be placed there due to other equipment, then the battery shall be placed under the floor in a separate battery compartment.

23. All manufacturers/installers shall supply to the user with the vehicle on delivery, documentation of wiring compliance, including approved exceptions. The required wiring documentation shall consist of a wiring diagram showing the major components and subassemblies by name, location and wire color. The diagram shall be supplied to the driver with the modified vehicle (a copy to the Automotive Engineering Office of DMV, one copy to the servicing dealer, and a copy at manufacturer's/installer's headquarters). All copies shall identify the specific vehicle, the purchaser and date of delivery. The purchaser shall sign for this diagram on the delivery invoice.

24. The separate battery compartment shall:

i. Be sealed from passenger compartment;

ii. Have an access door/plate with a seal for service;

iii. Have a separate vent tube to allow proper venting of battery gases into the open air; and

iv. Have a battery cable entry point into compartment grommetted.

25. All wiring, components, and wiring installation shall meet the standards and recommended practices for motor vehicle wiring established by the Society of Automotive Engineers.

12:45-3.39 General mechanical and assembly specifications

(a) The standards for construction and installation of general mechanical and assembly specifications are as follows:

1. All interior/exterior refinishing shall be of automotive original quality with no rough/burr edges or surfaces.

2. Welding surfaces shall be free from cracks, serious undercuts, overlap, surface holes or slag inclusions. The width of the bead shall be uniform throughout the weld.

3. All fasteners shall be of automotive quality either bolts and as specified in specifications rivets.

4. All nuts shall be fastened with an effective locking device. When nuts are used which utilize a fiber or nylon locking insert, at least one entire round of the bolt thread shall extend through the nut.

5. All exterior joints shall be assembled, sealed and insulated to protect water or air passages.

6. All manufacturer/installer installed items shall have a provision for securement. The manufacturer/installer shall ensure that the modifications do not result in the incursion of exhaust gases into the passenger compartment as a result of the supplied modifications and installations. Compliance shall be mandatory and may be checked on DMV inspection of the completed modifications.

7. All modifications and related vehicle equipment shall be accessible for servicing.

8. The manufacturer/installer shall supply and install a permanent certification label placed in the vicinity of the original vehicle manufacturer's label which indicates that the vehicle complies with all applicable FMVSS. The label shall contain the following information:

i. Name and address of modification corporation;

ii. Date of modification;

iii. Telephone number of modifier; and

iv. A statement that the modifications meet the requirements of the State of New Jersey.

9. A list of all modifications made to the vehicle shall be furnished to the user and one in glove box, the other given to the user. The list shall be on the manufacturer's invoice and signed by an officer of the company.

10. The written information on the use and maintenance of all major equipment additions shall be furnished to user.

11. The certification label, list of modifications and written information on the use and maintenance of the vehicle shall be acknowledged by the driver on delivery. The manufacturer shall keep duplicate copies for his or her records.

12. Any items removed from a vehicle shall be returned to the user. The user shall acknowledge the returned items by signing a receipt. If owner declines, manufacturer/installer shall secure a signed release to dispose of the items.

13. All modified vehicles shall be subject to the DMV inspection to ensure compliance with regulations. Non-compliance with this subchapter may result in the vehicle being rejected at the annual inspection.

14. All clevis pins, axles or connectors employed at pivot points on various control and servo systems shall be case hardened steel, and shall be secured with mechanical locking devices.

15. All vacuum, air, hydraulic lines shall be routed or mounted as not to chafe, swing or kink.

16. All vacuum, air, hydraulic lines should comply with the standards for electrical wires.

17. All mechanical and assembly techniques shall meet the standards and recommended practices established by SAE, incorporated herein by reference.

18. Air, vacuum and hydraulic lines and hoses shall meet all applicable FMVSS and/or SAE standards, incorporated herein by reference.

12:45-3.40 Transfer bars (SP.34.1)

(a) The requirements for construction and installation of transfer bars are as follows:

1. A transfer bar shall not be attached to fiberglass raised tops or to an unreinforced sheet metal area.

2. A transfer bar shall be attached to a structural member.

3. Through-bolting with back plating shall be required if the attachment hardware comes under tension during transfer.

12:45-3.41 Instructor brake (SP.34.4)

(a) The requirements for construction and installation of the instructor's brake are as follows:

1. An instructor brake may be requested on a modified vehicle as deemed necessary for driver safety (via consultation with evaluator) due to the engine box blocking access to the brake pedal by an individual in the right front seat.

2. The instructor brake shall be installed to meet all safety requirements of the DMV and the general installation specifications of NJDVRS for modified vehicles, incorporated herein by reference.

3. The instructor brake shall have a locking arm or a strap to prevent accidental use by a passenger when use is not needed or required.

4. All instructor brakes must be through-bolted into a structural member or sheet metal of at least 16 gauge which has been securely attached (that is, through-bolted or welded) to the remainder of the body. All fasteners shall have washers of at least two inches in diameter and 1.25 inches in thickness or the equivalent steel plating.

12:45-3.42 Automotive wheelchair roof carriers/loaders (SP.34.2)

(a) The requirements for construction and installation of automotive wheelchair roof carriers/loaders are as follows:

1. The unit case shall be fiberglass, aluminum or other DVRS prior approved non-corrosive metal or fiber.

2. The power shall be electrical employing 12 volt DC.

3. All switches shall be long toggle type spaced to prevent accidental employment. Surface contact switches may be considered.

4. All switches shall be installed to coincide with the direction of use.

5. All wires shall be color coded. All switches shall be marked as to function and direction of use.

6. The lift mechanism shall employ chain or cable. The chain shall have no rough edges which may cut user if touched when in oper-

ation. If cable is used, the cable shall be vinyl encased to prevent cutting if accidentally touched.

7. When opening or closing, the cover shall be securely fastened to main frame, rails.

8. The lift hook shall be capable of being custom set for depth of the driver's chair.

9. The case shall have rubber or equivalent moisture seal.

10. The case shall have rubber or acceptable lower edge moldings.

11. The fastening plates shall be fastened with rivets or equivalent fasteners.

12. All roof entry points shall be moisture sealed and waterproofed.

13. The fastening pads shall be placed as far out as possible so as not to cause roof to dent or flex over one-eighth inch.

14. The unit shall have momentary switches which demand continuous pressure by the driver.

15. The electrical power cord shall not be exposed. The entry point from the unit shall be grommetted and water/moisture sealed.

16. The switch location shall not interfere with driver's entry or exit from the wheelchair to the driver's seat.

17. All control switches shall be placed in a position most convenient to ensure driver's independent operation, to be determined at time of installation.

18. The standards for general electrical and mechanical specifications shall apply to automotive wheelchair roof carriers/loaders.

19. The lower plate of the case shall have rain drain holes.

20. The roof loader may require capabilities of entry from either right side (passenger side) or left side (driver side) according to the individual need of the user.

12:45-3.43 Special communication systems for wheelchair transfer van (SP.91.1)

(a) The requirements for the construction and installation of special communication systems for wheelchair transfer vans are as follows:

1. The mobile communication unit shall be hands free enabling a mobility impaired driver to operate the primary motor vehicle control surfaces and to keep his or her eyes on road without the need to disengage from primary control surfaces after activating system.

2. The unit shall have an A/B switch.

3. The unit shall have a mini transceiver which permits greater flexibility for installation. Mini shall mean less than 75 cubic inches.

4. The unit shall have a signal strength indicator.

5. The unit shall have a call-in progress protection which enables the user to continue in an existing system conversation when the ignition is turned off.

6. The unit shall have a duration alert of one minute intervals for a minimum of five minutes.

7. The unit shall have a data transmission memory function (DTMF) feature.

8. The unit shall have a call-in absence indicator.

9. The unit shall have a repertory memory scroll and an automatic storing into vacant memory address.

10. The unit shall have a maximum 1.9 amp draw in use and 0.2 amp in standby.

11. Power output shall not be less than three watts (50 ohms) conducted.

12. The antenna supplied shall be vehicle matched and suitable to yield maximum coverage and stronger signal strength as required in use.

13. The vendor shall supply a system that has direct access to and relationship with a landline base phone organization for stability reasons.

14. The vendor shall have a formal certification program that all technicians must pass in order to install cellular communication equipment.

15. The system shall have a limited warranty for a period of not less than three years.

16. The vendor, in order to give maximum service shall have direct access and relationship with mobile phone centers owned and operated by the vendor's supplier to allow easy access for required and routine service of the system. At a minimum these centers should be in north, central and southern New Jersey such as Bergen, Middlesex, Mercer and Burlington counties.

17. The system shall have an assurance policy for minimum of one year with ongoing assurance policy available at minimal cost.

18. The system shall not have a fee for a documented emergency call.

19. The system shall be supplied only by a vehicle modifier vendor in conjunction with vehicle modification.

(a)

DIVISION OF WORKERS' COMPENSATION

1990 Maximum Workers' Compensation Benefit Rates

Adopted Amendment: N.J.A.C. 12:235-1.6

Proposed: September 5, 1989 at 21 N.J.R. 2701(a).

Adopted: October 16, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: October 16, 1989 as R.1989 d.563, **without change.**

Authority: N.J.S.A. 34:1-5; 34:1-20; 34:1A-3(e) and 34:15-12(a).

Effective Date: November 6, 1989.

Expiration Date: May 5, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being $370.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1990.

TREASURY-GENERAL

(b)

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT
DIVISION OF PURCHASE AND PROPERTY, PURCHASE BUREAU
DIVISION OF BUILDING AND CONSTRUCTION
DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES, AND WOMEN AND MINORITY BUSINESSES

Purchase Bureau

Goods and Services Contracts for Small Businesses, Urban Development Enterprises and Micro Businesses

Minority and Female Subcontractor Participation in State Construction Contracts

Concurrent Readoption with Amendments: N.J.A.C. 17:12 and 12A:10-1

Concurrent Joint Readoption and Recodification with Amendments: N.J.A.C. 17:13

Adopted Concurrent Joint New Rules: N.J.A.C. 17:14 and 12A:10-2

Proposed: September 5, 1989 at 21 N.J.R. 2810(a).

Adopted: October 13, 1989 by Feather O'Connor, State Treasurer, and October 12, 1989 by Borden R. Putnam, Commissioner, Department of Commerce, Energy, and Economic Development.

Filed: October 13, 1989 as R.1989 d.554, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12(d), 10:5-36(k) and (o), 52:34-13, Executive Orders No. 34(1976) and No. 189(1988).

Effective Date: October 13, 1989, Readoption with Amendments; November 6, 1989, Changes upon adoption.

Expiration Date: October 13, 1994.

Summary of Public Comments and Agency Responses:

There were no comments received regarding N.J.A.C. 17:12. However, three comment letters were received regarding N.J.A.C. 17:13 and 14 and three additional letters offered comments concerning only N.J.A.C. 17:14.

The Department of Higher Education (DHE) made the following comments regarding N.J.A.C. 17:13:

COMMENT: A technical notation that not all of the State institutions of higher education were properly listed in N.J.A.C. 17:13-1.1(e)2.

RESPONSE: N.J.A.C. 17:13-1.1(e)2 has been changed to reflect the appropriate corrections.

COMMENT: The DHE supports the elimination of the in-State preference for micro businesses and suggests that this preference should be eliminated for small businesses as well.

RESPONSE: Pursuant to the statutory definition of N.J.S.A. 52:32-19(e), a small business must have its principal place of business in the State. This is not to say that a small business must have all of its business activities and location in the State, but rather that the greater scope of its business activity must be in the State (production, distribution, etc.).

COMMENT: The DHE suggests that percentage goals be applied to dollar amount of contracts and not just number of contracts when setting aside procurement opportunities for designated businesses.

RESPONSE: Although agencies and departments by statute and regulation are required to report the dollar amount of contracts, specific set-aside percentages based on dollar amounts are not required (See N.J.S.A. 52:32-21(a)).

The New Jersey Highway Authority made the following comments concerning N.J.A.C. 17:13:

COMMENT: The Authority requested clarification regarding the beginning of the time period for registration challenges when a specific contract is at issue. Moreover, the Authority indicated that there is a potential for delays in awards for agencies requiring board approvals of awards.

RESPONSE: Changes in the rules have been made to accommodate the Authority and similarly situated contracting agencies. N.J.A.C. 17:13-1.7(a)1 now stipulates that a registration challenge shall be made within 10 days of bid opening when a specific contract is at issue.

COMMENT: The Authority recommends that the requirement that three qualified bidders respond to a proposal should be changed to one qualified bidder. The Authority believes that this requirement "unwarrantly hamper(s) Authority business."

RESPONSE: Pursuant to N.J.S.A. 52:32-20, a contract may be awarded by a contracting agency as a set-aside contract whenever there is a reasonable expectation that bids may be obtained from at least three qualified bidders. Changing this requirement to one qualified bidder would be contrary to the specific language of the statute.

COMMENT: The Authority requested that it be allowed to submit its set-aside report and plan on a calendar year basis as opposed to a State fiscal year.

RESPONSE: Recognizing that many of the authorities and independent agencies of the State operate on a calendar year basis as opposed to a State fiscal year, the rules have been changed accordingly. Those contracting agencies which operate on a calendar year will report accordingly and those on the State fiscal year will file the necessary reports on the same schedule as before.

R&M Computer Sales Leasing Co. made the following comments concerning N.J.A.C. 17:13:

COMMENT: An additional set-aside category should be added for businesses which are owned by disabled veterans.

RESPONSE: Although businesses which are owned by disabled veterans are not a specific set-aside category, sufficient opportunity and coverage is provided for this group by the existing three set-aside business categories.

COMMENT: One commenter asserts that N.J.A.C. 17:14 is inconsistent with *City of Richmond v. J.A. Croson Co.*, 488 U.S. ___, 109 S.Ct. 706, 102 L.Ed. 2d 854 (1989), because of its imposition of race and sex based subcontracting targets for prime contractors submitting bids on State construction contracts.

RESPONSE: The commenter's legal opinion is in error. *Croson* holds that race and sex based contract set-aside programs must be justified by a compelling governmental interest (including the remedying of past discrimination) and be narrowly tailored to justify that interest. The subcontracting targets in N.J.A.C. 17:14 further the State's compelling interest in ensuring that prime contractors are not presently engaging in discrimination in the awarding of subcontracts. Moreover, the program is narrowly tailored to achieve this goal because the targets vary with the project, failure to satisfy the targets does not disqualify a contractor but merely subjects his subcontracting practices to further scrutiny, and the program is of limited duration.

The DHE offered several comments regarding N.J.A.C. 17:14:

COMMENT: A technical notation that not all of the State institutions of higher education were properly listed in N.J.A.C. 17:14-1.1.

RESPONSE: N.J.A.C. 17:14-1.1 has been changed to reflect the appropriate corrections.

COMMENT: The DHE asserted that these rules seem to modify existing statutory authority for colleges and universities to independently exercise contracting authority by requiring review by the Division of Building and Construction on bid documents to establish minority and female participation targets and review of bids received to determine if those levels had been satisfied.

RESPONSE: Language has been inserted to clearly indicate that agencies and colleges that have independent statutory authority to award contracts have authority to set minority and female targets, to review bids received and to determine a bidder's compliance with these regulations on contracts awarded by that agency, authority, or college in consultation with the Department of Commerce, Energy and Economic Development.

COMMENT: The DHE commented that the data on the availability of minority and female subcontractors to be used in setting participation targets will not be available until a consolidated data base using a unified construction classification can be established within the Department of Commerce, Energy and Economic Development.

RESPONSE: The Departments of Commerce, Energy and Economic Development and Treasury recognized that the time needed to establish a centralized data base reflecting the availability of minority and female subcontractors may impede the implementation of these rules. An interim operating procedural measure requires contracting agencies currently maintaining individual lists of minority and female construction related contractors to submit monthly updates which will be compiled by the Department of Commerce, Energy and Economic Development and distributed to each agency having authority to award contracts. This consolidated list will be used to establish target levels based on the availability of minority and female contractors.

COMMENT: The DHE also commented that the rules should be more explicit indicating that a determination that a bidder's failure to engage in reasonable outreach efforts may result in an agency determining that the bidder is not deemed responsible under these rules.

RESPONSE: Clear language has been inserted at N.J.A.C. 17:14-1.9 to indicate that a bidder's failure to engage in reasonable outreach may result in a determination that a bidder is not deemed responsible under these rules.

COMMENT: The DHE commented on the absence of penalties if successful bidders fail to enter into proposed subcontracts with a minority subcontractor during the completion of the contract.

RESPONSE: While these rules do not indicate penalties or fines to be imposed if a contractor fails to complete its minority and female subcontractor utilization plan as presented in the bid, contracting agencies which have procedures for rating a contractor's overall performance on a contract may consider this aspect of the contractor's performance in that rating process. Likewise, in reviewing subsequent bids submitted by a contractor, its performance on previous contracts may be reviewed when making the determination regarding that contractor's responsibility and may be used in support of an allegation of unlawful race and sex discrimination.

COMMENT: The New Jersey Water Supply Authority commented that the proposed rules do not provide a built-in time frame for completion of the review process specified at N.J.A.C. 17:14-1.9(c).

RESPONSE: The proposed rules have been amended to indicate that each State contracting agency performs the review specified at N.J.A.C. 17:14-1.9(c), thereby making the time limits for that process a matter for each agency to determine.

The New Jersey Highway Authority made the following comments regarding N.J.A.C. 17:14:

COMMENT: The New Jersey Highway Authority commented that N.J.A.C. 17:14 clearly governs the award of construction related service contracts for inspection and coordination or supervision of construction contracts by definition. The Authority requested clarification concerning the applicability of N.J.A.C. 17:14 to contracts for engineering and architectural design, mapping and photogrammetric services and contracts for maintenance of sewage treatment plant and repair and replacement of guiderails.

RESPONSE: Construction related professional services, such as architectural and engineering services, are implicitly covered in N.J.A.C. 17:14-1. To make that inclusion explicit, a definition for consultant has been inserted in N.J.A.C. 17:14-1. Additionally, the definition of construction contract has been clarified to explicitly include "highways" along with "public structure or facility".

COMMENT: The Authority also requested clarification of the provisions of N.J.A.C. 17:14-1.4, requiring "any business which seeks to register as a minority business and/or female business, must apply to the Department of Commerce", with the provisions of N.J.A.C. 17:14-1.4(c) which allows agencies to use other legitimate eligibility requirements.

RESPONSE: The requirements are not in conflict with N.J.A.C. 17:14-1.4(c) which allows contracting agencies to require that technical eligibility standards already in effect for prequalification of specific trade classifications (for example, electrical subcontractors) need also to be met. The Department of Commerce, Energy and Economic Development will be the sole agency maintaining a list of vendors who have had their qualifications reviewed regarding their minority and female ownership. Technical prequalifications when required by a state contracting agency are a separate matter.

COMMENT: Clarification was requested regarding the requirements in N.J.A.C. 17:14-1.6(b) which specifically identifies the Division of Building and Construction rather than State contracting agencies. Similar comments concerning the sole mention of the Division of Building and Construction in N.J.A.C. 17:14-1.9 regarding subcontracting targets were also made.

RESPONSE: The clarifications requested have been made.

The Utility and Transportation Contractors Association of New Jersey voiced support for the provisions of N.J.A.C. 17:14 and submitted four comments.

COMMENT: The association questions "what are reasonable outreach efforts and how are such efforts to be judged?"

RESPONSE: The participation targets will be individually established on each contract and will be included in the bid documents of each contract. Likewise, the reasonable outreach efforts will also be stated in the bid documents so that each potential bidder will have information specific to the contract on which he or she is bidding.

COMMENT: The Association also cautioned against establishing unrealistic targets for types of construction involving enormous amounts of materials and equipment which may provide very little subcontracting possibilities.

RESPONSE: The individualized targets will take into consideration the subcontracting possibilities on each specific contract. The technical staff responsible for preparing the specifications and cost estimates will identify probable subcontracting opportunities in accordance with industry standards and attach a cost estimate to each. The availability of potential minority and female subcontracts for those identified subcontracting opportunities will be determined by comparing registered minority and female subcontractors in the data base maintained by the Department of Commerce, Energy and Economic Development. By so doing, the targets will reflect the actual availability of minority and female subcontractors.

COMMENT: The Association commented that providing the dollar value of price quotes from minority and female subcontractors in the bid documents would create problems for both subcontractors and prime contractors.

RESPONSE: A change has been made in N.J.A.C. 17:14-1.10 to delete the requirement that the dollar value of price quotes from minority and female subcontractors be included in bid documents. The change was made in recognition that the time and cost of submitting finalized prices to all bidders when only one will be awarded the contract is counterproductive for both prime and subcontractors. In determining whether targets have been met, the construction cost estimate prepared by the contracting agency for the work identified as committed to minority and female subcontractors will be used.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:12 and 12A:10-1.

Full text of amendments to the readoption and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

17:12-1.1 General course and method of operation

(a) (No change.)

(b) The Purchase Bureau is under the direct supervision of the Director of the Division of Purchase and Property, who is charged with the responsibility of making contracts or agreements and writing orders, the price of which is to be paid with or out of State funds. If the aggregate amount involved does not exceed the threshold established pursuant to N.J.S.A. 52:34-7, any purchase, contract, or agreement may be made, negotiated or awarded by the Director without advertising in any manner which he may deem effective and practicable to permit full and free competition.

(c) When the aggregate amount exceeds the threshold established pursuant to N.J.S.A. 52:34-7, specifications and invitations for bid shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency. Any such purchase, contract or agreement where the cost or contract price exceeds the threshold referenced above may, with the written approval of the State Treasurer, be made, negotiated, or awarded by the Director of the Division of Purchase and Property without advertising when the subject matter thereon is that described in N.J.S.A. 52:34-9 and 52:34-10.

(d) (No change.)

(e) When deemed to be in the best interest of the State, the Director may authorize the award of contracts on the following basis:

1. Line item;
2. Term contract;
3. Multi source contract; or
4. Waiver of Advertising.

17:12-1.2 Source for public information

(a) The public may receive information concerning the State purchase program and invitations to bid by contacting the Director of the Division of Purchase and Property, 135 West Hanover Street, Room 112, Trenton, New Jersey 08625.

(b) Subsequent to bid opening, all bid documents are considered public information, notwithstanding any other disclaimers submitted by the bidder to the contrary.

17:12-1.3 Definitions

These words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Day" means working day unless specifically noted otherwise.

. . .

"Multi source contracts" means a commodity or service awarded to two or more bidders required to meet the needs of agencies in accordance with the provisions of N.J.S.A. 52:34-12.1. The Director shall take into consideration such factors as delivery and pickup locations, quantities, compatibility and cost, etc.

. . .

"Waiver of advertising" means a contract awarded without public advertisement pursuant to the provisions of N.J.S.A. 52:34-9 and 52:34-10.

17:12-2.1 Advertised bids

(a) When advertising is required, the advertisement for bids shall be placed in such newspaper or newspapers selected by the Director, Division of Purchase and Property as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 working days in advance of the bid opening in order to permit competitive bidding.

(b) If during the course of a purchase advertised pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such amendments shall be advertised a minimum of five working days in advance of the bid opening date and time.

17:12-2.2 Bid security

(a) The Director or his designee may require bid security where, in his or her opinion, it is determined that security is warranted, based upon a review of market conditions and an evaluation of potential risk to the State.

(b) Bid security, in such an amount as the Director or his designee deems necessary, shall consist of a certified or cashier check drawn to the order of the Treasurer of the State of New Jersey, an individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit shall be drawn naming the State Treasurer, State of New Jersey as beneficiary issued by a Federally insured financial institution.

17:12-2.3 Performance security

(a) Performance security may be required by the Director, Division of Purchase and Property or his designee in such an amount on any award for a term contract or line item purchase in which the Director or his designee, at his discretion, feels that such security is warranted. The performance security shall consist of a certified or cashier's check drawn to the order of the Treasurer of the State of New Jersey, an individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit shall be drawn naming the State Treasurer, State of New Jersey as beneficiary issued by a Federally insured financial institution.

(b) Failure to submit the required performance security may be sufficient cause for the Director to cancel the contract and assess the contractor for any costs incurred by the State.

17:12-2.4 Information in bidding

(a) (No change.)

(b) The Director may make a stipulated award to a bidder when deemed to be in the best interest of the State, considering terms, conditions, specifications and cost. However, in no case shall the stipulated award be used to correct a deficient bid proposal.

17:12-2.5 Cause for automatic rejection of bids

(a) Pursuant to N.J.S.A. 52:34-12, the State Treasurer has determined that it is in the public interest to establish grounds for automatic rejection of bids which fail to conform with the requirements of the request for proposal in the following respects:

1. No signature in the bid document: If the vendor has not affixed his signature anywhere in the bid document, that is, on any of the documents he returns in response to a request for proposal. Signature on an enclosed bid deposit check (where security is required) will not suffice, since bid security is not considered part of the bid document. Signatures on the Stockholders Disclosure Form and the Affirmative Action Affidavit do not constitute a bid signature;

2. Bid not received on or before the time and date, and at the place specified on the bid request form;

3. (No change.)

4. Failure to provide bid security when it is required and in the amount specified in the bid;

5. (No change.)

6. Failure to initial price alterations: If a unit price in the bid has been altered, the vendor's initials must appear adjacent to the alteration. Examples of alterations include, but are not limited to, crossouts, erasures, etc., with reentered prices. If the alteration has not been so initialed, that particular item only in the bid will be automatically rejected, except as follows: If the extended price is correct and does not contain alterations, it shall be considered the bid price. If the extended total price does not contain alterations and the altered unit price is not initialed, the extended total price is considered as the bid price. In the event of an automatic rejection, and when the bid contains multiple items, the remainder of the bid will be evaluated;

7.-8. (No change.)

9. Telephone, telefacsimile or telegraph bids will not be accepted for publicly advertised bid requirements which specify sealed bid submissions.

17:12-2.7 Bid errors

(a)-(d) (No change.)

(e) If a pricing error is discovered after bid opening between the unit price and the total extended price, the unit price shall prevail.

(f) (No change in text.)

17:12-2.8 Bid openings

(a)-(b) (No change.)

(c) If a bid is received by the Purchase Bureau prior to the time and date of the bid opening, but through error has not been opened and read publicly at the specified time, date and place, the Director shall notify all bidders and schedule a bid opening date, time and place for that bid or bids only.

17:12-2.9 Response to bid invitation; result of failure

If a bidder does not respond to three consecutive opportunities to bid for the same product or service, the Director may remove the bidder from the bidder's list for that product or service.

17:12-3.3 Request for hearings; hearing procedures; time limitations

(a) Any interested bidder requesting a hearing:

1. Must make written request to the Director, Division of Purchase and Property setting forth the specific grounds for challenging the award. The notice must be submitted within 10 working days after receipt of written notification that his bid has not been accepted or that an award of the contract has been made. If no written notice of award is provided, the request for hearing must be made within a reasonable time.

2. Hearings which are not under the jurisdiction of the Office of Administrative Law shall be informal and held, where feasible, within 14 days. Hearings will be heard, where practicable, by an impartial hearing officer. The hearing officer shall prepare a report to the Director within 10 days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10 day period for exceptions, the Director, Division of Purchase and Property, shall make a final judgment on the matter;

i. Such informal hearings as convened under these rules are fact finding for the benefit of the Director. The Director may determine that sufficient information already exists in the record so that a decision can be made without an informal hearing. The Director may waive the informal hearing and publish a final decision accordingly.

3.-4. (No change.)

17:12-3.4 Necessary parties to the hearing

(a) In those instances where a hearing is requested by an interested bidder, the Director, Division of Purchase and Property, shall extend invitations to all interested vendors who bid on the matter in question. The extent of the participation of these parties shall be limited to those matters in question as expressed by the complaining parties. The Director, Division of Purchase and Property, has discretionary authority to exclude invitations to bidders in those cases where such bidders have no potential interest in the outcome of the hearing.

(b)-(c) (No change.)

17:12-5.1 Subscription fees

(a) The Director, Division of Purchase and Property, may establish a subscription fee for the dissemination of State contract and specification information to the local governments, volunteer fire departments and volunteer first aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies and independent authorities and independent institutions of higher education of this State. That fee shall be chargeable on an annual basis, and shall be structured to include direct State costs of personnel, printing and mailing of notices of award and other procurement information to the local governments, volunteer fire departments and volunteer first aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies and independent authorities and independent institutions of higher education.

AGENCY NOTE: N.J.A.C. 17:12-6 is recodified as N.J.A.C. 17:13.

SUBCHAPTER 6. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:12-*[7.2]**6.2* Causes for debarment of a person(s)

(a) In the public interest, Division of Purchase and Property shall debar a person for any of the following causes:

1.-13. (No change.)

14. Any offer or agreement to pay or to make payment either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to report in writing forthwith or failure to obtain a waiver from the Executive Commission on Ethical Standards, who may undertake, directly or indirectly, any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g;

17. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

CHAPTER 13
GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, URBAN DEVELOPMENT ENTERPRISES AND MICRO BUSINESSES

SUBCHAPTER 1. GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, URBAN DEVELOPMENT ENTERPRISES AND MICRO BUSINESSES

17:13-1.1 Applicability and scope

(a) The rules in this chapter are jointly promulgated by the Department of Commerce, Energy and Economic Development (hereinafter, "Department of Commerce") and the Department of Treasury to implement the Small Business Set-Aside Act, P.L. 1983, c.482, as amended and renamed the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, P.L. 1985, c.384, N.J.S.A. 52:32-17 et seq. These rules establish goals of 15 percent of State contracts for small business, seven percent of State contracts for urban development enterprise and three percent of State contracts for micro business, exclusive of those contracts governed by N.J.S.A. 17:14-1 et seq.

(b) These rules require the Department of Commerce to establish and implement standards and procedures for registering vendors as small business, urban development enterprise and micro business. These rules require the Department of Treasury to establish contracting and purchasing procedures for implementing the goals of these rules.

(c) These rules are divided into two major parts. The first part, N.J.A.C. 17:13-1.3 to N.J.A.C. 17:13-1.8, describes the procedures for businesses to qualify under these rules and the penalties for filing false information under these rules. The second part, N.J.A.C. 17:13-1.9 to N.J.A.C. 17:13-1.16, describes the procedures for State agencies to implement these rules.

(d) Applications and questions regarding eligibility as a small business, urban development enterprise and/or micro business should be addressed to:

Division of Development for Small Businesses
and Women and Minority Businesses
Department of Commerce, Energy and Economic Development
20 West State Street
CN 835
Trenton, New Jersey 08625

Questions concerning the award of contracts under these rules should be directed to:

Department of the Treasury
General Services Administration
Division of Purchase and Property
Attention: Purchase Bureau
135 W. Hanover St.
CN 230
Trenton, New Jersey 08625

(e) These rules apply to every State agency with purchasing authority or contracting authority. The rules in this chapter apply to all contracts for the purchase of goods and services which are awarded by the State's various contracting agencies. The State contracting agencies whose purchases are governed by these rules include the following except where expressly inconsistent with statutory law:

1. DEPARTMENTS:
Agriculture
Banking
Personnel
Commerce, Energy and Economic Development
Community Affairs
Corrections
Education
Environmental Protection
Health
Higher Education
Human Services
Insurance
Labor
Law and Public Safety
Military and Veterans Affairs
Public Advocate
State
Transportation
Treasury

2. COLLEGES:
[Edison College]
...
Kean College **of New Jersey***
...
[N.J.] ***New Jersey*** Institute of Technology
Ramapo College **of New Jersey***
[Rutgers University]
Richard Stockton State College
Rutgers, The State University
Thomas A. Edison College
...
University of Medicine and Dentistry **of New Jersey***
William Paterson College **of New Jersey***

17:13-1.2 Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

...

"Cooperative purchasing" means an award made by the Division of Purchase and Property for the use of either local governing authorities, pursuant to N.J.S.A. 52:25-16.1 et seq., volunteer fire

departments, volunteer first aid squads and rescue squads, pursuant to N.J.S.A. 52:25-16.2, county colleges, pursuant to N.J.S.A. 18A:64A-25.9(b), State colleges, pursuant to N.J.S.A. 18A:64-60, or quasi-State agencies, pursuant to N.J.S.A. 52:27B-56.1. Such an award is made as an adjunct to an award of a contract for State agency purchases.

"Delegated Purchase Authority" means the authority of a State agency to award contracts on its own pursuant to authority delegated by the Director, Division of Purchase and Property. (See N.J.S.A. 52:25-23.)

"Direct purchasing" means the issuance of a purchase order by a State agency for a specific item of goods or service, for which a contract either has already been awarded or is simultaneously being awarded. The term is generally applied when a State agency issues a purchase order for goods or services available under either a contract awarded by the State agency pursuant to its own statutory contracting authority, a term contract awarded by the Division of Purchase and Property, or a line-item contract awarded by the State agency pursuant to purchasing authority delegated from the Division of Purchase and Property. (For line-item contracts awarded by the Division of Purchase and Property, a purchase order is issued by the Division of Purchase and Property.)

. . .

"Multi source contract" means a term contract awarded by the Division of Purchase and Property or other contracting agency wherein more than one vendor is awarded a contract. The term is applicable in two situations, when defined in conjunction with the Division of Purchase and Property (see N.J.S.A. 52:34-12.1):

1. Where the volume of business is so large or the geographical distances are so great that more than one vendor is necessary to serve the State's needs; or

2. Where the differences between various vendors' versions of a product are so significant that it is useful to have a contract with a vendor of each product.

. . .

"Request for Proposals" or "RFP" means the document issued by the Purchase Bureau of the Division of Purchase and Property or any other contracting agency which forms the basis of an advertised bidding and award process conducted by the contracting agency. The RFP defines the contract's basic terms and conditions, the specifications, and other requirements, such as a set-aside requirement (restricting the bidding to businesses qualified as small business, urban development enterprise or micro business). RFP's are usually of two types, those for term contracts and those for line-item contracts.

"Set-aside contract" means a contract specifically designated by a contracting agency as being for small business, urban development enterprise and/or micro business.

"Term contract" means an award made by a contracting agency in which a source of supply for a product is established for a specific period of time. A term contract is generally applied when a State agency:

1. Establishes a fixed, unit price or discount for items to be purchased thereunder;

2. Provides for some estimated dollar volume or minimum quantities to be purchased; or

3. Provides for the rebidding of any single purchase which exceeds a specified maximum amount.

"Using agency" means the State agency for which a contract or a purchase of goods or services is being made.

"Waiver" means an award process authorized by N.J.S.A. 52:34-9 and 52:34-10, which does not require public advertisement and which is approved by the State Treasurer. Whenever possible competition is sought prior to issuance of a waiver of advertising.

17:13-1.3 Standards of eligibility for small businesses, urban development enterprises and micro businesses

(a) A business may be eligible as a small business, an urban development enterprise, a micro business, or a combination of the three.

(b) In order to be eligible as a small business, a business must be independently owned and operated.

1. For purposes of these rules, a business shall be deemed to be independently owned and operated if its management is responsible for both its daily and long term operation, and if its management owns at least 51 percent interest in the business.

(c) In order to be eligible as a small business, a business must have its principal place of business in New Jersey.

1. For purposes of these rules, a business shall be deemed to have its principal place of business in New Jersey:

i. When it has been either incorporated or registered to do business in New Jersey; and

ii. When either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes.

(d) In order to be eligible as a small business, a business must be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time positions.

1. In determining its number or full-time employees, a business shall not include:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods or services which are the subject of the specific contract the business wants to be eligible as a small business.

(e) In order to be eligible as an urban development enterprise (UDE), a business must be independently owned and operated.

1. For purposes of these rules, a business shall be deemed to be independently owned and operated if its management is responsible for both its daily and long term operation, and if its management owns at least 51 percent interest in the business.

(f) In order to be eligible as an urban development enterprise, a business must have its principal place of business in a municipality designated as being qualified under the New Jersey Urban Development Corporation Act pursuant to N.J.S.A. 55:19-3(f).

1. For purposes of these rules, a business shall be deemed to have its principal place of business in a municipality designated as qualified under the New Jersey Urban Development Corporation Act:

i. When its incorporation or registration papers or latest New Jersey State Income Tax Form indicates a postal zip code assigned to a UDC qualified municipality; and

ii. When either 51 percent or more of its employees work in a UDC qualified municipality as evidenced by the payment of unemployment taxes, or 51 percent or more of its business activities take place in a UDC qualified municipality as evidenced by its payment of business taxes.

(g) In order to be eligible as an urban development enterprise, a business must be a sole proprietorship, partnership or corporation with 50 or fewer employees in full-time positions.

1. In determining its number of full-time employees, a business shall not include:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods or services which are the subject of the specific contract the business wants to be eligible as an urban development enterprise.

(h) In order to be eligible as a micro business, a business must be independently owned and operated.

1. For purposes of these rules, a business shall be deemed to be independently owned and operated if its management is responsible for both its daily and long term operation, and if its management owns at least 51 percent interest in the business.

(i) In order to be eligible as a micro business, a business must be a sole proprietorship, partnership or corporation with 20 or fewer employees in full-time positions.

1. In determining its number of full-time employees, a business shall not include:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods or services which are the subject of the specific contract the business wants to be eligible as a micro business.

17:13-1.4 Registration procedures for small businesses, urban development enterprises and micro businesses

(a) Any business which seeks to register under these rules as a small business, urban development enterprise and/or micro business must apply to the Department of Commerce. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce, the Division of Purchase and Property and the State's other contracting agencies.

(b) As part of its application to the Department of Commerce, a business shall reasonably document its principal place of business and independent status, and, as appropriate, the number of its employees. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as certificates of incorporation issued by the New Jersey Department of State.

1. If an applicant fails to complete fully the Vendor Registration Form or to document its application, the application may be delayed or rejected.

2. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. 17:13-1.8.

(c) In order to be registered under these rules, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency for whose contracts the business intends to bid.

17:13-1.5 Acceptance as a small business, urban development enterprise or micro business

(a) When a business is accepted as a small business, urban development enterprise and/or micro business, that business may bid on RFP's which are specifically set aside under these rules.

(b) When a business is accepted by the Department of Commerce as a small business, urban development enterprise or micro business, the business will be added by the Department of Commerce onto the set-aside vendors lists. These lists shall be used in determining whether the contracting agencies have fulfilled their contracting goals under these rules and shall be used by contracting agencies in soliciting bids or contracts set aside for small business, urban development enterprise and/or micro business and other purchasing and contracting situations. (See N.J.A.C. 17:13-1.9 and 17:13-1.12) There will be no limits to the number of businesses on the various Small Business, Urban Development Enterprise and Micro Business bidders list. Each eligible applicant will be placed on that list or those lists for which it is qualified.

17:13-1.6 Time for application to register as a small business, urban development enterprise or micro business

(a) A business may apply to the Department of Commerce at any time to be registered under these rules as a small business, urban development enterprise or micro business and to be placed on appropriate set-aside vendors lists.

(b) Where a contract has been specifically set aside under these rules for small business, urban development enterprise and/or micro business, a business may apply to the Department of Commerce for purposes of registration as a set-aside business so as to bid on that specific contract no later than the bid opening date for that contract, and shall include the name of the contracting agency, the RFP number and the bid opening date along with its application to the Department of Commerce.

17:13-1.7 Procedures for challenging a business registered as a small business, urban development enterprise or micro business

(a) The qualification under these rules of a business on a bidders list as a small business, urban development enterprise or micro business may be challenged by any other business on the State bidders list or any ***advisory council or any*** of the State departments or agencies covered under these rules. The qualification of a business to bid on a contract set aside for small business, urban development enterprise and/or micro business may be challenged by any other bidder for the contract on the State bidders list.

1. A registration challenge shall be made in writing *[to]* ***and received by*** the Department of Commerce *[with]* ***within 10 days of bid opening with*** copies ***simultaneously delivered*** to the challenged business and to the appropriate contracting agency when a specific contract is at issue.

2. A registration challenge to the Department of Commerce may concern only the qualification of a business under these rules as a small business, urban development enterprise or micro business. Any challenge to a business' qualifications to perform a contract shall be referred to the appropriate contracting agency.

3. The written challenge shall be accompanied and supported by documentation in support of its charges.

(b) In the case of a challenge to a bidder on a set-aside contract, except *[where emergent circumstances disclosed to the Department of Commerce and the bidders require]* ***when the contracting agency requests*** the immediate implementation of an award, the State contracting agency making the award *[shall be notified and]* shall withhold the final award of the set-aside contract for 10 days from the date of *[the issuance of any intent to award or proposed award]* ***receipt of the challenge***, so that the Department may conduct a hearing if warranted.

[1. Within seven days of being notified of the challenge, the contracting agency shall furnish the Department of Commerce with the relevant information about the bidders (names, addresses, telephone numbers) and about the RFP or other solicitation for the set-aside contract.]

[2.] ***1.*** In the event that a proposed awardee on a set-aside contract is disqualified under these rules by the Department of Commerce, the contracting agency shall proceed to award the contract as otherwise authorized by these rules and by its own enabling laws.

[3.] ***2.*** In the event that a proposed awardee is not disqualified by the Department within 10 days of the date of the *[proposed award]* ***challenge***, the contracting agency may proceed with the proposed award.

[4.] ***3.*** The right to challenge a bidder's registration under these rules is in addition to any protest hearing rights which are afforded by a contracting agency, such as those provided by the Division of Purchase and Property in N.J.A.C. 17:12-3.

(c) (No change.)

17:13-1.8 Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible small business, urban development enterprise or micro business on the basis of false information knowingly supplied by the business and the business has been awarded a set-aside contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, may:

1.-3. (No change.)

(c) Any business approved by the Department of Commerce as a small business, urban development enterprise and/or micro business shall immediately apprise the Department of any circumstances which might disqualify the participation of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any bidders list under these rules and may subject the business to adverse action by the contracting agency. (See N.J.A.C. 17:12-7.5 and N.J.A.C. 17:12-7.2)

17:13-1.9 Purchase goals

(a) These rules establish goals for contracting agencies of awarding 15 percent of their contracts to small business, seven percent of their contracts to urban development enterprise and three percent of their contracts to micro business.

(b) In determining compliance with the goals, an agency may consider only businesses duly approved by the Department of Com-

merce as small business, urban development enterprise and micro business.

(c) In determining compliance with the goals, the Division of Purchase and Property, and any other contracting agency whose primary function is to award contracts for use by other agencies, may consider the total number of contracts it has awarded and the number it has awarded to small business, urban development enterprise and micro business. For those purposes, it may count the number of awards made under term contracts, in addition to the number of line-item contracts it has awarded, notwithstanding the dollar amounts of the contracts, and the number of purchase orders issued by using agencies under the contracts.

(d) In determining compliance with the goals, other contracting agencies, using agencies issuing purchase orders under contracts otherwise awarded and agencies awarding contracts under delegated purchasing authority shall consider separately the number and the dollar amount of purchase orders issued. In setting its goals, the agency shall compute the total number of purchase orders issued and the total dollar amount expended by the agency through purchase orders. The agency shall attempt both to issue the appropriate percentage of purchase orders to businesses approved under these rules and to spend an appropriate percentage of money on these purchases.

(e) In determining the purchase goals, an agency shall not include any contract or purchase for which the application of the set-aside preferences, in-State preferences or other procedures established by these rules would jeopardize the State's participation in a program from which the State receives Federal funds or other benefits.

(f) Where an agency is otherwise unable to fulfill the goals under these rules, the agency shall make a good faith effort to achieve its goals through specifically setting aside contracts and purchases for small business, urban development enterprise and/or micro business. A set-aside contract must be competitively awarded and may be awarded only after the receipt of bids from three qualified bidders.

(g) In determining compliance with the goals, the award of a contract or purchase order may be counted toward only one goal. For example, the award of a contract to a small business located in a municipality designated as being qualified under the New Jersey Urban Development Corporation Act and having no more than 20 full-time employees may be counted toward either the small business goal, urban development enterprise goal or micro business goal, but not towards more than one goal.

17:13-1.10 Set-aside plans

(a) On or before August 1 of each year ***for contracting or using agencies operating on the State's fiscal year and on or before February 1 of each year for agencies operating on the calendar fiscal year,*** each contracting agency and using agency shall prepare and submit to the Department of Commerce a set-aside plan for meeting the purchase goals for the current fiscal year.

(b) The set-aside plan shall include:

1. A general list and explanation of the goods and services and/or types of goods and services which are deemed appropriate for meeting the purchasing goals;

2. A consideration of the estimated dollar amounts and numbers of purchase orders expected for various contracts and types of contracts;

3. A list of those contracts and/or purchase orders it expects to award to small business, urban development enterprise and micro business, identifying those contracts it intends to set aside.

(c) After consultation with the Department of Commerce, the contracting agency or using agency shall begin implementing the current year's set-aside plan no later than October 1 ***for contracting or using agencies operating on the State's fiscal year and no later than March 1 for agencies operating on the calendar fiscal year.*** However:

1. The agency and the Department shall periodically review the plan's implementation and shall develop any revisions which may be necessary to achieve the goals; and

2. Where the agency and the Department disagree about the agency's plan or its implementation, the matter shall be submitted immediately for prompt resolution by the Commissioner of the Department of Commerce, Energy and Economic Development and the State Treasurer, or their designees.

17:13-1.11 Factors in establishing purchasing plans

(a) The following factors are to be considered by contracting and using agencies in determining whether a contract or purchase is appropriate for meeting the agencies' goals:

1. Small business, urban development enterprise or micro business do not currently obtain a significant percentage of State contracts, but wherein the price, quality of product and responsibility of small business, urban development enterprise or micro business are competitive with the general business community; or

2. The normal bidding process creates unnecessary obstacles against small business, urban development enterprise and micro business irrespective of any actual ability of these businesses to perform the contracts or fulfill the State's needs; or

3. Small business, urban development enterprise and micro business are not competitive with the general business community, but wherein the State would not suffer any disadvantage if a percentage of contracts and purchases were awarded to those businesses; or

4. The State's long term best interests in purchasing lie in developing small business, urban development enterprise and micro business in competition with the general business community; or

5. The State's long term best economic and social interests lie in developing small business, urban development enterprise and micro business; or

6. The practices of the contracting or using agency create unnecessary obstacles to the award of contracts to small business, urban development enterprise and micro business; or

7. Potential emergency conditions, public health and safety considerations, or the continued operation of vital State services, preclude setting the contract aside for bidding exclusively by small business, urban development enterprise and micro business.

17:13-1.12 Bidders list

(a) With the cooperation and coordination of the Department of Commerce, contracting agencies and using agencies shall maintain lists of small business bidders, urban development enterprise bidders and micro business bidders.

(b) (No change.)

(c) On or about October 1 of each year, each contracting agency and using agency maintaining small business, urban development enterprise and/or micro business vendors lists shall submit such lists for review and approval to the Department of Commerce. The Department shall respond by December 15.

1. Unless and until disapproved by the Department, a State agency may continue to use any existing small business, urban development enterprise and micro business bidders lists.

2. Unless and until disapproved by the Department, the State agency may continue to count towards its purchasing goals contracts awarded to any business previously approved for inclusion on a designated bidders list.

3. Where a contract is specifically set aside for small business, urban development enterprise and/or micro business, and where no approved list is available from the Department, an agency may issue RFPs or other solicitations to businesses on any otherwise appropriate list of bidders so long as the RFPs and solicitations specify that only approved small business, urban development enterprise and micro business, as appropriate, may bid on the contract. The agency shall also include a New Jersey Vendor Registration Form with the RFP or other solicitation and shall include instructions on how to apply to the Department of Commerce for appropriate approval.

(d) (No change.)

17:13-1.13 Set-aside contracts

(a) Any contract specifically set aside for small business, urban development enterprise and micro business must be competitively bid, either through public advertising or through informal bidding, and may be awarded only if responsive bids from at least three qualified bidders are received.

(b) The RFP for a set-aside contract shall clearly and conspicuously state that an award may go only to a business duly approved by the Department of Commerce.

1. The RFP shall further state that a bidder who is not already approved, may submit a bid but then must apply to the Department

of Commerce for approval as a small business, urban development enterprise or micro business, as appropriate, no later than the bid opening date and, in order to be eligible for an award under that RFP, must be approved by the Department no later than five working days after the bid opening date. The RFP shall state that if for whatever reason, the contracting agency does not receive approval of that bidder from the Department of Commerce no later than five working days from the bid opening date, the agency shall reject that bid without any obligation or recourse to the bidder.

(c) All bids may be rejected on a set-aside contract and the contract may be rebid as an ordinary contract where:

1. In evaluating the small business, urban development enterprise and/or micro business bids, the agency determines that acceptance of any of the bids would subject the State to an unreasonable expense, or to a contract otherwise unacceptable pursuant to that agency's contracting and purchasing laws and rules; or

2. The agency does not receive at least three bids from qualified vendors approved as small business, urban development enterprise and/or micro business, as appropriate; and

3. The agency notifies the bidders and the Department of Commerce of the reasons for its action, and the agency maintains its records of the bidding process for seven years from the bid opening date.

(d) Immediately after rejecting all bids, the agency may, without any delay, rebid the contract as an ordinary award. Small business, urban development enterprise and micro business bidders may participate in this rebidding process.

17:13-1.14 Purchasing and contracting reports

(a) On or before October 1 of each year ***for contracting or using agencies operating on the State's fiscal year and on or before March 1 of each year for agencies operating on the calendar fiscal year***, each contracting and using agency shall report to the Department of Commerce on the results of its purchasing and contracting performance for the previous ***respective*** fiscal year. The compilation of these reports shall be the sole responsibility of those Departments and contracting agencies required to report.

(b) The report shall include:

1. The total number of contracts awarded and/or purchase orders issued by the contracting or using agency.

2. The estimated total dollar amounts of contracts and/or purchase orders awarded by the contracting or using agency.

3. The number of set-aside contracts and/or purchase orders awarded by the contracting agency and by its using agencies.

4. The estimated dollar amounts of contracts and/or purchase orders awarded to small business, urban development enterprise and micro business by the contracting or using agency.

5. A breakdown of the types of contracts and/or purchase orders awarded generally and awarded to small business, urban development enterprise and micro business by the contracting or using agency.

6. An analysis of whether and how the previous year's goals were achieved by the contracting or using agency.

17:13-1.15 Consultation with industry

(a) The Department of Commerce shall conduct no less than two consultation sessions each year with bidders, vendors and industry representatives for the purpose of soliciting information and suggestions on implementing the goals in these rules.

(b) The consultation dates and times will be incorporated into a plan developed by the Department for each fiscal year.

(c) Bidders, vendors and industry representatives may call the Division of Development for Small Business and Women and Minority Businesses for the exact time, date and location of these sessions.

(d)-(g) (No change.)

(h) Notice that the sessions have been held will be included in the annual reports of Departments on the implementation of these rules for small business, urban development enterprise and micro business.

17:13-1.16 Delegation of Treasurer's authority

For purposes of implementing these rules, the authority of the Treasurer under these rules is delegated to the Administrator of the General Services Administration.

CHAPTER 14
MINORITY AND FEMALE SUBCONTRACTOR PARTICIPATION IN STATE CONSTRUCTION CONTRACTS

SUBCHAPTER 1. MINORITY AND FEMALE SUBCONTRACTOR PARTICIPATION IN STATE CONSTRUCTION CONTRACTS

17:14-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the Department of Commerce, Energy and Economic Development or his or her designee.

"Construction contract" means any contract to which the State or any State contracting agency is a party involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any public structure or facility ***or highway***. The term also includes ***contracts for consultant services,*** the supervision, inspection and other *[on-site]* functions incidental to actual construction.

"Consultant" means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction or highway project.

"Contractor" means any party performing or offering to perform a prime contract, ***consultant*** and any supplier of materials or goods used to perform a construction contract with the State of New Jersey or any board, commission, committee, authority or agency of the State.

"Division of Building and Construction" means the State agency within the Department of Treasury which provides a centralized purchasing service for other State agencies pursuant to N.J.S.A. 52:18A-151 and 162.

"Female business" means a business which is a sole proprietorship, partnership or corporation at least 51 percent of which is owned and controlled by women.

"Minority business" mens a business which is a sole proprietorship, partnership or corporation at least 51 percent of which is owned by persons who are Black, Hispanic, Portuguese, Asian American, American Indian or Alaskan natives, defined as follows:

1. Black American: having origins in any of the black racial groups of Africa.

2. Hispanic American: a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

3. Asian American: a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

4. American Indian or Alaskan native: a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

5. Portuguese: a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

"State contracting agency" means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make contracts and includes the following except where expressly inconsistent with statutory authority:

1. DEPARTMENTS
Agriculture
Banking
Personnel
Commerce, Energy and Economic Development
Community Affairs

Corrections
Military and Veterans Affairs
Education
Environmental Protection
Health
Higher Education
Human Services
Insurance
Labor
Law and Public Safety
Public Advocate
State
Transportation
Treasury
2. COLLEGES:
[Edison College]
Glassboro State College
Jersey City State College
Kean College **of New Jersey***
Montclair State College
[N.J.] ***New Jersey*** Institute of Technology
Ramapo College **of New Jersey***
[Rutgers University]
Richard Stockton State College
Rutgers the State University
Thomas E. Edison College
Trenton State College
University of Medicine and Dentistry **of New Jersey***
William Paterson College **of New Jersey***
3. AUTHORITIES
Board of Public Utilities
Casino Redevelopment Authority
Development Authority for Small Businesses, Minorities and Women's Enterprises
Expressway Authority
Health Care Facilities Financing Authority
Highway Authority
N.J. Economic Development Authority
N.J. Educational Facilities Authority
N.J. Health Care Facilities Financing Authority
N.J. Housing & Mortgage Finance Agency
N.J. Transit Corp.
N.J. Water Supply Authority
Public Broadcasting Authority
Sports and Exposition Authority
Turnpike Authority
Urban Development Corporation
4. COMMISSIONS
Beach Erosion Commission
Casino Control Commission
County and Municipal Government Study Commission
Election Law Enforcement Commission
Executive Commission on Ethical Standards
Hackensack Meadowlands Development Commission
N.J. Commission on Capital Budgeting & Planning
N.J. Racing Commission
North Jersey Water Supply Commission
Passaic Valley Sewer Commission
Pinelands Commission
State Commission of Investigation
Commission of Science and Technology and all other departments, colleges, authorities and commissions as may be established in the future.

"Subcontractor" means a third party that is engaged by a contractor to perform under a subcontract all or part of the work included in a contract.

"Treasurer" means the Treasurer of the State of New Jersey or his or her designee.

17:14-1.2 Applicability and scope

(a) The rules in this subchapter are jointly promulgated by the Department of Commerce, Energy and Economic Development (hereinafter, "Department of Commerce") and the Department of the Treasury to implement N.J.S.A. 52:34-12(f) which provides that a publicly bid contract is to be awarded to the responsible bidder whose bid will be most advantageous to the State, price and other factors considered. The statute further provides that any and all bids may be rejected when it is in the public interest to do so. These rules also implement N.J.S.A. 10:5-32 which provides that public works contracts shall provide for equality in opportunity by any contractor engaged in a public works project.

(b) The Treasurer and the Commissioner have determined that a "responsible" bidder does not engage in unlawful race or sex discrimination in its awarding of subcontracts***, the purchase of supplies used in construction**** and does make reasonable efforts to solicit and award subcontracts to minority and female businesses. These rules, therefore, presume that contractors who have attained or exceeded specified target levels for minority and female subcontractor participation on particular State construction contracts are not currently engaging in unlawful race or sex discrimination and have engaged in reasonable outreach efforts. A contractor who is unable to attain or exceed such target levels may have its subcontracting practices examined by the Department of ***the*** Treasury to determine if it is engaging in unlawful race or sex discrimination in its selection of subcontractors or has failed to engage in reasonable outreach efforts. These rules are designed to assure that bidders receivng State construction contracts are not engaging in such unlawful discrimination and make reasonable outreach efforts.

(c) These rules apply only to State construction contracts and are not applicable to the award of State contracts for the purchase of goods and services ***not related to construction contracts***.

(d) Applications and questions regarding eligibility as a minority business and/or female business should be addressed to:

Certification and Approvals Unit
Department of Commerce, Energy and Economic Development
20 West State Street
CN 823
Trenton, New Jersey 08625

Questions concerning eligibility under this subchapter of minority businesses should be directed to:

Office of Minority Business Enterprise
Department of Commerce, Energy and Economic Development
20 West State Street
CN 823
Trenton, New Jerey 08625

Questions concerning eligibility under this subchapter of female businesses should be directed to:

Office of Women Business Enterprise
Department of Commerce, Energy and Economic Development
20 West State Street
CN 823
Trenton, New Jersey 08625

17:14-1.3 Standards of eligibility for minority business and female business

(a) A business may be eligible for designation as a minority business, a female business, or both.

(b) In order to be eligible as a minority business or a female business, a business must be independently owned and operated.

1. For purposes of these rules, a business shall be deemed independently owned and operated if its management is responsible for both its daily and its long term operation, and if its management owns at least 51 percent interest in the business.

(c) In order to be eligible as a minority business, a business must satisfy the definition of minority business in 17:14-1.1.

17:14-1.4 Registration procedures for minority businesses and female businesses

(a) Any business which seeks to register as a minority business and/or female business must apply to the Department of Commerce. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the

Department of Commerce, the Division of Purchase and Property and the State's other contracting agencies.

(b) As part of its application to the Department of Commerce, a business shall reasonably document its independent status, and, as appropriate, the number of its employees and the character of its ownership. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee or affirmative action reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of State.

1. If an applicant fails to complete fully the Vendor Registration Form or to document its application, the application may be delayed or rejected.

2. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules.

(c) In order to be registered under these rules, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency for whose contracts the business intends to bid.

17:14-1.5 Approval as a minority business or female business

(a) When a business is approved by the Department of Commerce as a minority business or female business, the business will be added by the Department of Commerce onto the female or minority vendors lists which shall be used in determining whether bidders for State construction contracts have complied with N.J.A.C. 17:14-1.9.

(b) There shall be no limit to the number of businesses on the female and minority vendors lists. Every qualified applicant will be placed on that list or those lists for which it is qualified.

17:14-1.6 Time for application to register as a minority business or female business

(a) A business may apply to the Department of Commerce at any time to be registered as a minority business or female business and to be placed on the appropriate vendors list.

(b) If a business is to be considered as a minority business or female business subcontractor on a specific contract for purposes of these rules, it must have applied to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the *[Division of Building and Construction]* ***State contracting agency*** except as noted in (c) below.

(c) If a business is to be considered as a minority business or female business subcontractor on a contract funded by the "Correctional Facilities Construction Bond Act of 1987" for purposes of these regulations, it must meet the pre-qualification requirements of N.J.S.A. 32-2.3(b)(2) in addition to having applied to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the Division of Building and Construction.

17:14-1.7 Procedures for challenging a business registered as a minority business or female business

(a) The qualification under these rules of a business on a vendors list as a minority business or female business may be challenged by any other business on that State vendors list or any of the State departments, agencies, boards, commissions, committees, and authorities covered under these rules.

1. A registration challenge shall be made in writing to the Department of Commerce with copies to the challenged business and to the appropriate contracting agency where a specific contract is at issue.

2. A registration challenge to the Department of Commerce may concern only the qualification of a business under these rules as a minority business or female business. Any challenge to a business' qualifications to perform a contract shall be referred to the appropriate contracting agency.

(b) When the Department of Commerce receives a challenge, upon request of the business whose designation is at issue, the Department shall conduct a hearing on the matter as follows:

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Department may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the Commissioner of the Department of Commerce. This designee will issue a written report to the Commissioner within four working days of the close of the hearing.

4. Where time permits, participants at the hearing will be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a vendor's eligibility shall not stay the contract award process.

17:14-1.8 Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a ***subcontract on a*** State construction contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, may:

1. Assess the business a penalty in an amount of not more than 10 percent of the amount of the contract involved; and

2. Order the business ineligible to transact any business with the State for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies.

17:14-1.9 Subcontracting targets

(a) The Division of Building and Construction ***or other State contracting agency consistent with its statutory authority***, in consultation with the Department of Commerce, shall set target levels for the participation of minority businesses and female businesses as subcontractors for each construction contract awarded through the public bidding process. These target levels shall be set on an individual basis for each construction contract and shall be based upon the number of ***registered*** minority and female businesses qualified to participate as subcontractors on such contracts.

(b) If the target levels are satisfied by a bidder, the bidder will be presumed not to be engaging in unlawful race and sex discrimination in the selection of subcontractors and will be presumed to have engaged in reasonable outreach efforts.

(c) If the target levels are not satisified by a bidder, the Department of ***the*** Treasury ***or other State contracting agency consistent with its statutory authority*** shall review the subcontracting practices of the bidder to determine if it ***has engaged in reasonable outreach efforts or if it has engaged or*** is engaging in unlawful race or sex discrimination in the selection of subcontractors *[and to determine if it has engaged in reasonable outreach efforts. If said review does not indicate that the bidder is engaging in unlawful race or sex discrimination and does indicate that reasonable outreach efforts have been undertaken, the bidder will not be disqualified from bidding on that particular contract on the ground that it discriminates in IPS selection of subcontractors and/or has not engaged in reasonable outreach efforts]*.

1. If said review indicates that the bidder has engaged in reasonable outreach efforts and has not engaged in unlawful race and sex discrimination, the bidder will be in compliance with the requirements of these rules.

2. If said review indicates that the bidder has failed to engage in reasonable outreach efforts or has engaged in unlawful race and sex discrimination, the bidder shall be deemed not responsible under these rules.*

(d) In determining whether a bidder has satisfied the target levels, the award of a subcontract may count toward only one target. For example, the award of a subcontract to a business owned by a black woman may be counted either toward the minority business target or the female business target.

17:14-1.10 Submission of subcontracting information

Each contractor submitting a bid for a construction contract shall include bid information, in a format determined by the Department of *the* Treasury, as to the number *[and dollar value]* of subcontracts whose price quotes have been incorporated into the prime contractors' bid as having been committed to minority and female businesses and the identity of such businesses. The bid shall include such other information as the Department of *the* Treasury deems necessary to comply with this subchapter.

17:14-1.11 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

17:14-1.12 Review

The operation of the construction subcontract target level program contained in this subchapter and the need for its continuation shall be reviewed by the Treasurer and the Commissioner on an annual basis.

(a)

DIVISION OF INVESTMENT

Notice of Administrative Correction Common and Preferred Stocks and Issues Convertible into Common Stock; Limitations

N.J.A.C. 17:16-17.3

Take notice that the Department of the Treasury, Division of Investment, has discovered an error in N.J.A.C. 17:16-17.3, Limitations, in subsection (b). A change was proposed at 18 N.J.R. 1353(a) and adopted at 18 N.J.R. 1838(a), as part of R.1986 d.356, but was not incorporated in the update published September 22, 1986.

Full text of the corrected rule follows (deletions shown in brackets [thus]; additions shown in boldface **thus**):

17:16-17.3 Limitations

(a) (No change.)

(b) Not more than [two] **four** percent of the book value of any fund shall be invested in the common and preferred stock of any one corporation, except that this limitation for the Trustees for the Support of the Public Schools shall be 10 percent.

(c) (No change.)

PUBLIC NOTICES

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Action on Petition for Rulemaking Failure to Appoint from Complete Certification N.J.A.C. 4A:10-2.2

Petitioner: City of Newark, John K. D'Auria, Personnel Director.
Authority: N.J.S.A. 11A:4-5 and 11A:10-3.

Take notice that on August 23, 1989, the City of Newark, through Personnel Director John K. D'Auria, filed a petition with the Department of Personnel requesting an amendment to N.J.A.C. 4A:10-2.2, concerning failure to appoint from a complete certification list.

The petitioner proposes that a new paragraph (a)3 be added as follows:

3. Where the Department has been reimbursed by the jurisdiction for the costs of the selection process pursuant to this section, the Department shall not re-impose such costs on the jurisdiction if a subsequent certification from the same examination list results in no permanent appointment.

The petitioner asserts that the amendment is needed to prevent the Department of Personnel from collecting costs more than once for the same examination.

The rule in question requires a permanent appointment to be made from a resulting list once the examination process has been initiated due to the appointment of a provisional, and authorizes the assessment of costs against an appointing authority when a permanent appointment has not been made. In response to a petition previously submitted by the City of Newark to amend the same rule, the Merit System Board noted that the purpose of N.J.A.C. 4A:10-2.2 is to ensure that the competitive examination process, once initiated by the appointment of a provisional employee, is utilized to fill that position on a permanent basis. Moreover, the rule recognizes situations where a permanent appointment would not be appropriate, and provides for notice to an appointing authority and an opportunity to respond prior to the assessment of costs.

If the situation cited by the petitioner were to arise, the prior payment of costs for the same examination may be a factor in considering whether to waive or reduce the assessment, and could be cited by an appointing authority in its response to a notice of possible assessments. However, this type of situation has not arisen to date with the City of Newark or any other appointing authority. In the absence of a concrete problem to be remedied, it is unnecessary to change the rule to address the hypothetical situation raised by the petitioner. Therefore, the petition will not be implemented.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on July 17, 1989 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Water Quality Management Planning and Implementation Process Regulations (N.J.A.C. 7:15-3.4), an amendment to the Atlantic County Water Quality Management Plan was adopted by the Department. This amendment allows the expansion of the sewer service area of the Town of Hammonton to include the N.J. Expressway Authority's Central Maintenance Facility, Block 403 Lots 10 and 11 located in the Town of Hammonton.

(c)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Public Workshop

Stationary Source Strategy Development for the Ozone State Implementation Plan (SIP)

Take notice that the New Jersey Department of Environmental Protection, Division of Environmental Quality, will hold public workshops to solicit suggestions for strategies to control air contaminant emissions from stationary sources in order to reduce ozone air pollution. Suggested strategies will be considered for inclusion in the State's plan for controlling ozone air pollution. The all day public workshops will be held two separate days on:

Thursday, November 30, 1989, at 8:30 A.M.
Cook College Student Center, Multi-purpose Room C
Biel Road
New Brunswick, New Jersey 08903; and
Wednesday, December 6, 1989, at 8:30 A.M.
Stockton State College Residence Life Center, Multi-purpose Room
Pomona, New Jersey 08240

Suggestions for the control of ozone will be sought for all types of stationary sources, including manufacturing sources, surface coating sources, combustion sources, waste and water treatment sources, and consumer products. Control of large and small sources will be considered. In order to ensure sufficient seating for participants, **all persons wishing to attend** one of the workshops are requested to pre-register with the Department no later than November 24, 1989. This can be done by calling Diane Yarson at 609-984-3023.

Background

The United States Environmental Protection Agency is requiring the state of New Jersey to submit a revised State Implementation Plan by September 1992, for the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. The development of the SIP will require the identification and selection of strategies to prevent and control the occurrence of elevated ozone levels at ground level.

The Department has established, separate from these stationary source workshops, public participation procedures for the development of strategies for transportation related sources of ozone. That effort is known as Project Clean Air and involves consideration of mass transit, car pooling, and other transportation control strategies.

When the ozone SIP is formally proposed in early 1992, it will contain a combination of transportation and stationary source strategies which, when collectively implemented, are projected to result in the attainment of the NAAQS for ozone in New Jersey. The Department expects the 1992 SIP to rely heavily on transportation control strategies. However, a significant number of stationary source categories will probably be included. With these workshops the Department is beginning a two-year process to identify, evaluate, and prioritize stationary source control strategies for possible inclusion in the State's plan for controlling ozone air pollution.

(d)

DIVISION OF WATER RESOURCES

Notice of Adoption of the Treatment Works Approval Annual Report and Fee Schedule, pursuant to N.J.A.C. 7:1C-1.5.

Take notice that the Department of Environmental Protection ("Department") has adopted the Treatment Works Approval Annual Report and Fee Schedule ("Report"), covering fiscal year 1989-90. The Department, pursuant to N.J.A.C. 7:1C-1.5(a)5v, prepared the Report and held a public hearing concerning the fees to be assessed under the treatment works approval ("TWA") program. The new fee schedule for a TWA application proposed in the Report became effective on September 1, 1989.

The Department held a public hearing to present the Report on July 21, 1989 and the comment period for the hearing closed on July 28, 1989. The Department proposed a new fee formula for TWAs by proposing amendments to N.J.A.C. 7:1C in the April 3, 1989, New Jersey Register

(see 21 N.J.R. 819(a)). These amendments were adopted on July 20, 1989 and appeared in the August 21, 1989 New Jersey Register (see N.J.R. 2530(c)).

The Report contains details of the TWA program's activities, budget matters and the application of the new fee formula. The report is available at 401 East State St., 4th floor Receptionist, Trenton, New Jersey between 9:00 A.M. and 4:00 P.M. (telephone requests cannot be taken) or by sending a self-addressed 10 inch by 13 inch envelope to:

New Jersey Dept. of Environmental Protection
Division of Water Resources
Wastewater Facilities Management Element
Bureau of Construction and Connection Permits
Annual Report Request
CN-029
Trenton, New Jersey 08625

The amended rules in N.J.A.C. 7:1C include a TWA fee formula from which the value of the coefficient labeled "P" is computed. The value of this coefficient "P" and the cost of construction will then be used to calculate the application fee for all TWA projects.

The coefficient "P", was calculated by the following equation:

$$P = \frac{EB}{T1 + 2T2 + 4T3 + 1{,}500{,}000(N1) + 500{,}000(N2)}$$ where:

EB = 2,317,331 T3 = 91,314,402
T1 = 379,829,330 N1 = 62
T2 = 85,601,262 N2 = 185 resulting in:

P = .0021

The Report contains details and instruction as to determination of the appropriate fee.

Summary of Public Comments and Agency Responses:

COMMENT: The TWA Program must be accessible to the public. The current telephone system is apparently inadequate to handle the volume of calls and is, for the most part, not staffed with well trained operators. Calls must be placed repeatedly before successfully reaching a review engineer.

RESPONSE: The Department's Bureau of Construction and Connection Permits is in the process of purchasing an upgraded telephone system. There are quite a few special features such as call sequencing, that will allow more calls to be handled in a shorter period of time and caller "stacking" that holds calls in the order in which they were received. As an immediate solution to telephone access difficulties, two additional lines were recently installed and two employees assigned to answer calls coming in on those lines.

COMMENT: Adequate staffing for all fee supported programs should be provided to insure a high level of and timely service to the public. Given the cyclical nature of the construction industry, perhaps the Department should consider implementing a cross-training program for permit review staff, thereby allowing the flexibility to address various peak workloads as they occur.

RESPONSE: Although staffing for all fee supported programs cannot be spoken for in this document, the TWA program can be addressed. Sufficient and well trained staff for this program has grown over the years and is continuing to grow, which is one of the reasons that the fee formula was amended to integrate the growing program costs with the degree of service required to meet the public's need. Cross-training of permit review staff is actually not practical for a permitting program of this nature. Training would have to be extremely intensive and continuous to maintain an updated peripheral "part time" staff. Training efforts are concentrated on full time personnel, assigned to the TWA program to continuously maintain quality performance. The rate at which applications are received for review is fairly consistent in the TWA program and not necessarily as cyclical as the actual construction activities where such circumstances as weather might dictate peaks and lulls in work flow.

COMMENT: Sufficient lead time must be allowed (at least 90 days) between the proposal and effective date of TWA fee schedule due to lead time required to get application forms and endorsements signed and submitted.

RESPONSE: The effective date of September 1, 1989 was announced at the July 21, 1989 public hearing, which allows for six weeks advance notice of the fee changes. Any applications submitted on or after September 1, 1989, without a sufficient application fee will be processed; however, the applicant will be notified to submit additional funds.

COMMENT: One commenter submitted a letter dated April 10, 1989 from the Department of Environmental Protection ("Department") to the commenter which showed a cumulative surplus of all accounts within the Environmental Services Fund of over $2,418,000 as of February 1989 and specifically a surplus of over $328,000 in the TWA account. The commenter questioned the Department's rationale for increasing the TWA fees when a surplus in the account exists. This letter also advises that the Department of the Treasury ("Treasury") anticipates $391,575 from these funds as part of its general revenues for fiscal year 1989. What are the Department's plans for the use of the surplus funds? How far back can it be shown that portions of the Environmental Services Fund has gone into the general revenue accounts? To what degree has this occurred and when does the Department estimate that it will present a financial accounting of this to the public? By what authority does the Treasury assess the Environmental Fund?

RESPONSE: With respect to the balance shown in the Department's April 10, 1989 letter to the commenter, it must be kept in mind that the statement only reflected amounts expended from July 1988 through February 1989 and therefore represents a balance rather than a surplus. Using the old fee schedule, the average of this year's TWA income minus program disbursements results in a situation where the TWA program is disbursing approximately $30,000 more per month than it receives in fees. At that rate, assuming no additional staff or special purchases, the February 1989 balance of $328,195 will be exhausted within the next three to four months. It is expected that salary and operating expenses will increase in the current year and even more in the future fiscal years, especially if the additional TWA positions requested by the TWA program are established and subsequently filled.

Although it is not a routine practice to issue individual accounting statements on various funds since all its accounts are maintained within the General State Fund, the Department has, upon request, provided a financial account of the various funds. These funds fall under the audit review of the Treasury's audit group, as well as the State Auditor. Thus it is not the practice of the Department to issue individual accounting of funds since the utilization, review and scrutiny of funds falls, by law, under those offices. The Department maintains each of these balances including those shown as Sewer Extension in separate dedicated accounts.

During the past three years the Treasury, by authority of the annual Appropriations Act (P.L. 1989, c.122, P.L.1988, c.47 and P.L. 1987, c.154), has assessed $750,000 per year from the Environmental Services Fund. This anticipation by Treasury has been contained in both the Annual Budget Message and the Appropriations Act since fiscal 1988. The authority for anticipating those funds is by virtue of the Appropriations Act which constitutes law and is public information. The fiscal year 1989-1990 TWA Annual Fee Schedule and Report includes these assessments in the budget information section under "Indirect" charges (Minor Object 58), as shown in Appendix A of the Report. The Department intends to continue showing the indirect charges in this category in future years. The full definition of "Indirects" is also included in the Report; however, in summary, the indirect costs are charged to non-State funded programs at a rate of 32.70 percent of salaries plus benefits to cover costs indirectly associated with a program. Indirect costs include both salary and non-salary costs incurred by the administrative offices within the Department, building rental and other indirect cost categories determined by the Department of Treasury in the State-Wide Cost Allocation Plan ("Plan"). The Plan pertains to central services costs for the Department of Treasury which are approved on a fixed basis. Central services costs are allocated to non-State funding sources such as fee programs, Federal grants and trust funds.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan
Public Notice

Take notice that on August 4, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Atlantic County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan for the Township of Weymouth which provides a comprehensive long-term strategy for managing the Township's wastewater needs by the identification of suitable sewage disposal alternatives throughout the Township. The selection of these

alternatives was based on current zoning regulations, environmental constraints and the availability of regional sewerage service.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. An on-site groundwater disposal facility has been proposed to replace and expand the existing Delaware Elementary School wastewater treatment facility in Knowlton Township, Warren County. The proposed facility will be sized to accommodate 600 persons.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection betweeen 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Stafford Township Wastewater Management Plan (WMP). The WMP delineates existing sewer service areas and an expanded proposed service area for the Stafford Township MUA with treatment at the OCUA Southern Water Pollution Control Facility. The remaining portion of the township is shown as served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on August 24, 1989 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment approves the Township of Franklin, Gloucester County, Wastewater Management Plan (WMP). This WMP allows the construction of four new on-site wastewater treatment facilities to serve the proposed Delsea Middle School, the Mary F. Janvier Elementary School, the Royal National Line Inn and the Franklin Place Retail Shopping Center.

(d)

DIVISION OF WATER RESOURCES

Response to Comments on NJPDES Fee Assessments

Take notice that the following comments and responses refer to the Department of Environmental Protection's fee assessments for ground and surface water discharges regulated under the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A-1. In this notice, the Department provides responses to numerous comments pertaining to the administration of the NJPDES fee program. Publication of this notice marks the completion of the 1987-88 and 1988-89 NJPDES budget-making process. Pursuant to N.J.A.C. 7:14A-1.8, the Department will begin the 1989-90 (FY90) fee schedule process by publishing notice of a public hearing in the New Jersey Register and mailing copies of this notice to all NJPDES permittees. The Department will simultaneously publish proposed amendments to N.J.A.C. 7:14A-1.8 which will adjust the environmental calculations used to assess NJPDES permit fees. The Department will hold concurrent public hearings on the proposed amendments to N.J.A.C. 7:14A-1.8 and the 1989-90 Annual Fee Report and Fee Schedule. It is anticipated that this notice will appear in the New Jersey Register in late 1989.

A revised NJPDES Fee Schedule (N.J.A.C. 7:14A-1.8) was proposed May 4, 1987 at 19 N.J.R. 706(a). A public hearing concerning this proposal and the Fiscal Year 1988 budget was held on May 21, 1987. Ten people testified at this hearing and the Department received 100 written comments before the end of the public comment period (June 3, 1987). A summary of these public comments and the Department's responses was published at 19 N.J.R. 1191(a) on July 6, 1987. The following year, on May 24, 1988, the Department held a public hearing concerning the Fiscal Year 1989 budget and proposed fee schedule. Four people testified at this hearing and the Department received 22 written comments.

Pursuant to an order of the Superior Court of New Jersey, Appellate Division, the Department's Division of Water Resources held a second public hearing on the Fiscal Year 1988 NJPDES budget on August 25, 1988. As directed by the Court, the Department provided additional documents for public inspection prior to the hearing. Three people testified at this public hearing and 50 written comments were received before the close of the comment period on September 2, 1988. Set forth below are the Department's responses to these comments.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter felt that the Department failed to handle each facility on an individual basis when calculating permit fees. The commenter felt that the Department generalized and assumed conditions, resulting in incorrect fee calculations.

RESPONSE: The Department assesses each facility's fee based on its individual environmental impact which is based on its average reported pollutant loadings of all parameters limited in its NJPDES permit, the risk associated with the parameters, a bioassay factor for the discharge and the stream rating factor for the particular receiving stream. Further, in accordance with N.J.A.C. 7:14A-1.8(a)6, the permittee may request a fee recalculation if the permittee feels that an error has been made in the fee calculation. For FY90, the Department allowed the permittee to

participate in the calculation of its environmental impact prior to the preparation of the 1989-90 Annual Fee Report.

COMMENT: One commenter stated that the Department should use the most recent Discharge Monitoring Report ("DMR") values to calculate permit fees. For the 1988-89 fee calculation, the Department should use DMR's from July 1, 1987 through June 30, 1988.

RESPONSE: The Department uses reported pollutant loadings from the most recent available and complete Discharge Monitoring Reports. For the 1988-89 fee schedule, data from the period July 1, 1986 through June 30, 1987 was used. The DMR from the period which ends June 30, 1987 is not due to the Department until mid-August. This report is not available in the computer system until approximately September. The Department requires about six months to run fee assessments, and print the Annual Fee Report. Therefore, proposed fees would be available only three months before the beginning of the fiscal year.

COMMENT: The Department should print the Annual Fee Report in August or September of each year and by October have public hearings and permit fee calculations available for inspection by the permittees. If this schedule is followed, municipalities may then incorporate the proposed fee into their budget preparation for the following year.

RESPONSE: The Department hopes to establish a more acceptable NJPDES fee assessment schedule by FY91. For the FY90 billing period, the Department will provide NJPDES permittees with the Annual Report and Fee Schedule in late 1989. Actual fee assessments will not be mailed until early 1990. In the future, the NJPDES program budget will be completed in the final quarter of the State fiscal year incorporating the next fiscal year's Work Plan commitments. The Annual Report and Fee Schedule will be completed and mailed to all permittees by October and fee assessments issued in December or the middle of the billing period. Actual billing for FY90 will be delayed to allow the Department to propose and adopt amendments to the existing NJPDES fee regulations.

COMMENT: The Department should provide a technical workshop to work in unison with dischargers to arrive at proper fee assessments.

RESPONSE: The Department has prepared for FY90 an instruction package to afford permittees the opportunity to calculate their environmental impact used to prepare the proposed FY90 fee schedule. The Department staff is available to explain fee assessments on a case-by-case basis.

COMMENT: The State of New Jersey should provide financial assistance to municipalities that must complete monitoring tests for landfills. Municipalities that must comply with landfill monitoring requirements should not be charged a NJPDES permit fee.

RESPONSE: In accordance with N.J.S.A. 58:10A-9 of the New Jersey Water Pollution Control Act, the Department is authorized to assess annual permit fees to cover the estimated costs to process, monitor and administer NJPDES permits. Requests for funding to cover the costs incurred by the permittee to comply with the Department's regulations should be addressed to the New Jersey State Legislature.

COMMENT: Small businesses that are regulated by the NJPDES program should be regulated in a substantially different manner than the State's large regional sewage authorities.

RESPONSE: The Department, in the permit development process, establishes terms and conditions specific to the type of discharge to be regulated. Federal and State regulations do not provide for different environmental standards for the approximately 225 permittees that qualify as "small businesses". The NJPDES fee schedule takes into consideration the adverse environmental risk and impact of the permittee's discharge so that those who do the most to create the injurious conditions which give rise to the need for regulation bear a greater share of the costs.

COMMENT: The NJPDES program should be audited by an independent auditor. The cost of this activity is more appropriate than a sludge demonstration contract.

RESPONSE: The Department agrees that the NJPDES program should be audited by an independent auditor and that the NJPDES permittees should pay the cost associated with the costs of an audit. The Department is looking into the possibility of contracting independent auditing services which are available from the Office of Legislative Services, the Department of Treasury, and the Department of Environmental Protection, Office of Audit.

COMMENT: Small industries in New Jersey are being adversely impacted by the permit fees assessed by the Department of Environmental Protection.

RESPONSE: The NJPDES fee assessments are based on the impact the discharges have on the environment. The existing fee schedule distributes higher costs to those permittees who do the most to create a risk to New Jersey's environment.

COMMENT: The numbers of permits issued in 1986 and 1987 were basically constant at 772 and 780, respectively. Why has the NJPDES budget skyrocketed to 15 to 17 percent?

RESPONSE: Annual salary and operating cost increases account for approximately eight to 10 percent of the budget increase. The number of staff assigned to the NJPDES program also increased, as the complexity of NJPDES permit requirements expanded to include pretreatment, toxicity reduction through the imposition of acute and chronic limits, water quality based effluent limitations, ground water monitoring, and ground water remediation.

COMMENT: The NJPDES formula will use a square root of the total pollutant load next year and no root from 1991 on. This change will have a major impact on large authorities. In order to budget for this major change, the commenters request that a computer run with this year's pollutant loads be done to assess the impact of both the square root and no root equations.

RESPONSE: The Department has simulated the municipal fee assessments for FY90 and FY91 assuming that all currently discharging facilities continue discharging at the same level and the Department's budget remains the same. However, this scenario is extremely unlikely, since many facilities will be eliminated or will improve the quality of their effluent as a result of mandatory secondary treatment or regionalization. Currently, only two municipal facilities are assessed permit fees greater than $100,000. In FY91, several authorities will be assessed fees in excess of $100,000, while small treatment plants which currently pay $5,000 to $10,000 will benefit as their fees drop to $1,000 or less. When the cube root is finally phased out in FY91, all NJPDES permit holders will pay the same amount for each unit of environmental impact. Individual fees will be weighted of course, to reflect the risk posed by the various pollutants discharged, the toxicity of the discharge and the stream that receives the wastewater discharge.

COMMENT: It is believed that because of the Department's proposed change to a square root formula to calculate pollutant loadings, large discharger's fees will be so high that they will be assessed a disproportionate share of the fees budget. All permits require the same fundamental aspects of administering, monitoring and processing. The incremental costs of managing these functions is not reflective of the wide disparity of the fee assessments for the large and small discharges. It is recommended that the Department retain the cube root formula or other mechanisms to maintain some relationship between fee assessments and the cost incurred to administer the individual permit.

RESPONSE: While aggregate NJPDES permit fees are based upon the costs of processing, monitoring and administering the permits in aggregate, individual NJPDES permit fees are based on environmental impact and risks associated with the particular discharge. Under the current methodology, small dischargers are assessed a greater proportionate share of the NJPDES program costs because of the existence of the cube root factor. The Department believes that the elimination of the cube root factor will benefit all but the largest dischargers.

COMMENT: One commenter was concerned that large municipal dischargers which impact the environment to a great extent are assessed permit fees significantly less than small dischargers.

RESPONSE: The Department recognizes this problem and has adopted a provision to phase out the cube root factor. This change should reduce the fees for small facilities while increasing the costs associated with large dischargers. When the cube root is finally phased out in FY91, all NJPDES permit holders will pay approximately the same price for each gallon of wastewater discharged. A sliding scale will still persist since fees are based on environmental impact and not the actual volume discharged.

COMMENT: The NJPDES Annual Fee Report for 1988-89 indicates that the NJPDES budget has increased by 17 percent over the past year. The rate of increase is considerably greater than the four to five percent average rate in industry. The commenter requests that DEP provide sufficient background information to justify this high rate of increase.

RESPONSE: The Department reduced the FY89 budget to $16 million, which represented no increase over the FY88 budget. This was presented at the second public hearing held on August 25, 1988. The Department made available for inspection relevant documents used to develop the NJPDES program budgets. The following documents were available for inspection: detailed NJPDES program budget for FY88 and FY89, including names, current titles, salary, and the general program activity (permits, inspections, monitoring and administration); computer reports from the Department's Cost Accounting System of actual personnel hours and charges by category of discharge, NJPDES facilities, NJPDES administrative activities, and related charges as sick, vacation, training; com-

puter reports of operating expenditures for FY87 for the NJPDES Surface Water and NJPDES Ground Water accounts retrieved from the Department's Cost Accounting System based on State of New Jersey Invoices and Travel Expense Vouchers; a report of central account charges such as postage, telephone, printing and Central Motor Pool; and revised program budgets for FY89.

COMMENT: In 1987, the actual expenditures for vehicles, travel, data processing, household and clothing, professional services and supplies in the municipal discharge category was $477,022. The proposed amount for the Fiscal Year 1989 municipal budget is approximately $1.1 million. The commenter requested that the Department explain this significant increase.

RESPONSE: The NJPDES budget includes an estimate of the costs to be incurred by the municipal program during the next budget period. A credit is provided to NJPDES permittees in the next budget period, if the revenue received exceeds the total costs incurred to process, monitor and administer the NJPDES permit program. In FY87, the Department estimated costs to be $605,000. The total actual expenditures charged to the municipal program in FY87 were $477,022. NJPDES program expansion led to significant increases in the operational costs of processing, monitoring and administering the NJPDES permit program. The increased cost associated with data processing services, computer hardware, laboratory services, and routine postage, telephone and vehicular costs were incorporated into the FY89 budget.

COMMENT: The Department has included in the Industrial Program Budget Proposal $200,000 to hire a consultant to review Discharge Prevention, Containment and Countermeasures (DPCC), Spill Prevention Countermeasures and Control (SPCC), and Discharge Cleanup and Removal (DCR) Plans. The inclusion of this cost in the NJPDES permit program is contrary to N.J.S.A. 58:10A-9 of the Water Pollution Control Act which states that the Commissioner shall charge fees to cover the costs of processing, monitoring and administering the NJPDES permits. It was further stated that no NJPDES fee money was expected to be used for DPCC/SPCC/DCR plan reviews or program administration. This cost should be deleted from the NJPDES fee proposal.

RESPONSE: The Department agrees and has deleted the cost for consultant services from the NJPDES industrial program budget. Costs associated with direct DPCC/SPCC/DCR plan reviews and program administration were funded by the Spill Fund program and are not part of the NJPDES budget.

COMMENT: The Department has taken the approach that industrial facilities with both ground water and surface water discharges should be assessed one fee based on the surface water environmental impact. The approach of assessing one fee is laudable; however, the methodology for doing so appears flawed. The Department appears to have included a significant portion of the ground water program in the NJPDES Industrial budget. This has inflated the "surface water budget" by nearly 100 percent from $6.5 million in 1986-87 to $12 million in 1988-89. It also appears that by doing so, those dischargers who do not even have a ground water permit will, under this proposal, subsidize the ground water program. Furthermore, for those who do have a ground water discharge, there is no relationship between the costs of processing, monitoring and administering a ground water permit to the environmental impact of the surface water discharge of the same facility.

RESPONSE: The original industrial budget proposal included 60 percent of the costs associated with the ground water program because 60 percent of the regulated ground water facilities had surface water permits. As a result of comments received at the May 24, 1988 public hearing, the Department dropped from the Industrial program budget the costs associated with ground water activities. An additional minimum fee was assessed for the ground water if the regulated unit was part of the wastewater treatment system and the permittee was conducting a detection monitoring program. Contaminated sites will continue to be assessed a calculated permit fee based on the ground water environmental impact. Facilities that do not have a ground water permit will not be assessed fees to cover the costs associated with the ground water program.

COMMENT: The entire planning budget has been incorporated into the NJPDES budget. A lot of planning activities have nothing to do with the NJPDES program and there is no information in the budget for what specific parts of the planning budget are directly attributable to the NJPDES program.

RESPONSE: The Division of Water Resources Planning program has a total of 58 work years of which 14 work years are included in the NJPDES program budget. The specific work efforts expended in support of the NJPDES permit program include the development of wasteload allocations, water quality based effluent limitations, development and revision of water quality standards, State-wide water quality assessment and point source inventory, stream modelling and consistency determinations, which provide information used to establish general NJPDES permit conditions and water quality based effluent limitations. The NJPDES program does not fund the entire Planning program, but only activities which are related to processing, monitoring and administering NJPDES permits.

COMMENT: The work done by the Planning section for 208 Water Quality Plan revisions and 303 Plan revisions is not a permitting function. Money for this function should be appropriated by the State legislature and should not come from fees collected from NJPDES permittees.

RESPONSE: As noted above, only 40 percent of the overall planning work is chargeable to the NJPDES program. Establishing water quality based effluent limitations, evaluating if the proposed discharge is consistent with Area-wide 208 Water Quality Plans and 303 Plans, and assessing water quality are clearly necessary components of processing, monitoring and administering NJPDES permits.

COMMENT: Before the August 25, 1988 public hearing, the Department made available to all interested permittees supplemental information concerning the NJPDES fee schedule, program budget and the budgeting process. One commenter stated that the computer printouts were difficult to understand, and the supplemental information should be better organized and include more detail. Another commenter requested that an explanation of some of the costs of previous expenditures be explained so that an understanding of where these funds were spent could be obtained. This understanding is necessary because the Department utilizes these costs to justify the percentage increase for the new year.

RESPONSE: The documents readily available for public inspection were summary computer reports. Actual jurisdiction for each program expenditure is required on the individual State of New Jersey invoices (purchase orders) before NJPDES funds may be expended. These individual documents are available for inspection. These costs for FY89 represented less than 20 percent of the NJPDES program costs. In the future, the Department will attempt to simplify the presentation of supporting documentation.

COMMENT: One commenter requested that the Department explain the expenditures listed under "Cosmopolitan", "Kelly Services", and "Aim One Personnel".

RESPONSE: The Department employed temporary services from these companies due to the inability to hire clerical staff. The total cost to the NJPDES program for temporary services was $145,000.

COMMENT: The Department has budgeted $125,000 for temporary services. A commenter asked why the Department required temporary help when so many vacancies exist.

RESPONSE: The Department has budgeted $125,000 for temporary services due to an inability to recruit, hire and retain good clerical help.

COMMENT: Assigning one-half of Bureau Chief Leroy Cattaneo's work effort to the NJPDES program is unfair. He is responsible for the issuance of sewer extension permits and sewer bans as well as NJPDES permits. The routine issuance of NJPDES permits should not be administratively laborious.

RESPONSE: The NJPDES fee schedule is developed based on an estimated allocation of work effort for all bureau chiefs responsible for both NJPDES and non-NJPDES activities.

COMMENT: The Department should provide the public with a list of positions within the NJPDES program, a table of organization showing who and where their people work and what their duties are in relation to the NJPDES permitting process.

RESPONSE: The Department agrees that an organizational chart was not provided. However, the Annual Fee Report does provide an explanation of the NJPDES funded work activities performed. The supplemental budget proposal documents available for inspection prior to the August 25, 1988 public hearing listed the names, titles, actual salary costs, and work activities to be performed, and thus essentially provided the information requested.

COMMENT: The Department utilizes NJPDES fees to fund activities that are faintly related to the NJPDES permit program, such as 7.8 work years for Water Quality Assessments at a cost of $247,597; 10.25 work years for the New Jersey Geological Survey at a cost $337,487; 6.2 work years for Wasteload Allocation development at a cost of $281,455; six work years for the Fee Management Program at a cost of $138,516; and 16 work years for Information Systems at a cost of $424,166. This was not the intent of the Legislature when the NJPDES permit fee program was established.

RESPONSE: The work effort listed above is expended as direct support for the NJPDES permit program in the development of the terms and conditions for individual NJPDES permits. The New Jersey Geological Survey (NJGS) performs intensive stream sampling, monitors streams throughout the State to establish water quality. This information is used to develop wasteload allocations and water quality based effluent limits. The NJGS also performs compliance monitoring of the discharge, bioassay testing, and ground water quality to insure permit compliance with the specific terms and conditions of a facility's NJPDES permit. The Fee Management Section is responsible for developing the NJPDES program budget, developing the fee assessment methodology, assessing NJPDES permit fees and collecting permit fees. The Bureau of Information Systems performs automated permit compliance for reporting violations, preliminary permit application processing and routine data entry for Discharge Monitoring Reports (DMR's), Monitoring Report Forms (MRF's) and Well Monitoring Reports. The Department does not utilize NJPDES fees to fund non-NJPDES activities.

COMMENT: There is a 17 percent increase in the NJPDES fees from 1987-88 and 1988-89. The inflation rate is around four to five percent. The commenter asked the Department to explain why salaries for NJPDES personnel seem to be increasing well over the inflation rate.

RESPONSE: The Department in preparing the NJPDES budget proposal utilizes an inflation rate of eight percent over the current salary since this proposal is initiated six months before the beginning of the fiscal year and is expected to cover the entire 12 month period. In general, State employees receive approximately three percent merit increase annually and about five percent for cost of living adjustments. Also, many of the employees who were hired in trainee positions have been promoted to higher level titles which result in additional costs. The Department will provide a credit if estimated funds are not expended in support of NJPDES activities.

COMMENT: The Department included in its budget proposal $500,000 to purchase an Optical Disk System. One commenter asked if this new equipment was simply a convenience at an extra expense or was going to save the Department money. It appears that the entire Department will benefit from such a purchase. However, the entire cost is to be assessed to NJPDES permittees only. The commenter requested clarification as to whether NJPDES fees will be used to purchase an item intended for general use by the Department.

RESPONSE: The Optical Disk System will provide Department staff in offices around the State the capability to view NJPDES permits, monitoring reports and other documents filed with the Department. The Optical Disk System was to be utilized by NJPDES staff only. The purchase price of $500,000 provided a limited number of computer work stations which would allow the users in Department field offices to view recorded documents and a few work stations in the Trenton office to enter documents into storage. This cost was not included in the final budget proposal presented at the August 25, 1988 public hearing.

COMMENT: NJPDES fees should not go toward the treatment works approval process which has its own permitting fees.

RESPONSE: Treatment Works Approvals are listed as a surface water activity because many NJPDES permitted facilities may require a Treatment Works Approval issued by the Division of Water Resources. The costs associated with the Treatment Works application are funded through the Treatment Works Fee Program.

COMMENT: The NJPDES program began with a budget of $2.3 million and is now up to $19 million. It is out of control. This is not regulation—it is taxation. The NJPDES fees are unreasonable.

RESPONSE: The NJPDES program began in 1982 with a budget of $2.3 million and regulated approximately 1,000 surface water dischargers only. The Department utilized available Federal and State funds such as the 106 grant, State Enforcement. The Department, recognizing the importance of ground water supplies to the residents of the State, began to regulate ground water discharges. Currently, the NJPDES program regulates approximately 1,300 surface water, 1,000 ground water and 150 indirect (SIU) discharges. The Department places a greater emphasis on the reduction of toxics and includes chronic and acute whole effluent toxicity requirements in new and renewal permits. Ground water permitting program evaluates ground water monitoring results, determines the need for additional sampling and requires ground water remediation as required. More complex permits also require more complex compliance monitoring by the Department. Fees are assessed solely for regulatory costs for discharging pollutants. If a facility no longer requires a permit to discharge pollutants, then a fee is no longer required. This expansion and the changes in the program resulted in increases in the NJPDES program budget. The Joint Appropriation Committee provided the Department $1 million to offset the cost of the NJPDES program in Fiscal Years 1985, 1986 and 1987. Beginning in Fiscal Year 1988, the Department assessed the full cost associated with the NJPDES permitting program to NJPDES permittees. Additionally, the Department has established internal controls which should maintain a more reasonable rate of increases in the future. As a result of these controls, the Fiscal Year 1989 budget proposal was reduced from $19 million to $16 million.

COMMENT: The Department is taxing polluters and should consult the New Jersey Legislature and get them involved in the process.

RESPONSE: NJPDES fees are not taxes but administrative fees to defray the regulatory costs associated with permits to discharge pollutants to the waters of the State in an effort to mitigate unacceptable environmental impacts. The Department is authorized to assess permit fees to cover the estimated cost of processing, monitoring, administering the NJPDES permits in the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-9). Notice of the Public Hearing on the Proposed Fee Schedule and Annual Fee Report was sent to the Office of Administrative Law and published in the New Jersey Register.

COMMENT: Using NJPDES fees to fund a sludge research project is ridiculous. If such a study is needed the cost should be appropriated from the State's general fund by the Legislature.

RESPONSE: The Department proposed to complete a demonstration project to develop standards for the land application of sludge. This research project was included in the proposed NJPDES municipal program budget but eliminated as a result of comments received at the public hearing. This study was not funded with NJPDES fees.

COMMENT: The Fiscal Year 1988 budget included 57 vacant positions. The NJPDES budget should reflect the number of people who resign throughout the course of the year and what the number of vacant positions is in the NJPDES program during the course of the year. Another asked how many vacant positions were included in the Fiscal Year 1989 budget.

RESPONSE: The Fiscal Year 1988 budget was prepared by the Department in April of 1987 and included all positions the Department expected and was authorized to fill. In February of 1987, the Department was authorized to create 45 new positions for the NJPDES Landfill enforcement program. At the time of budget proposal, the name and position numbers were not known. Approximately 37 of the 45 newly created positions were filled during the period of April 1987 through January 1988. In total, 52 new employees started in the NJPDES program. The Department agrees that the NJPDES program experiences a high turnover rate and reduced the number of vacancies included in the Fiscal Year 1989 budget to a seven perent vacancy rate or 15 average positions at the August 25, 1988 public hearing.

COMMENT: The standard personnel budgeting practice is to include vacation time, administrative leave, sick leave, training expenses, etc. in the salaries of employees. The Department has budgeted for salaries and, in addition, has budgeted for $1.4 million for vacation, administrative leave, sick and training, holidays. The Division seems to be spending money for people who are in training. The commenter asked why the Department is spending $1.4 million over and above the budgeted amount for salaries for an item that should be included in salaries.

RESPONSE: The commenter misinterpreted the information provided by the Department. The budget proposal is based on the projected salary costs to be incurred by the Department in support of the NJPDES program, a fringe benefit and an indirect rate which is included in his or her base salary. The fringe benefit rate covers those costs associated with pensions, health benefits, unemployment insurance, temporary disability insurance, unused sick leave and the employers' share of FICA taxes. The current rate, as promulgated by the Office of Management and Budget in Circular Letter 89-07, amounts to 24.21 percent of an employee's salary. The indirect cost rate covers the broad category of indirect support which is assignable to all non-State funded programs, that is, fee-generated programs and dedicated programs, and which is negotiated by the Department with its assigned cognizant agency, which in this case is the United States Environmental Protection Agency.

COMMENT: The Department has included $241,000 in the NJPDES Budget for ECRA reviews.

RESPONSE: The original NJPDES budget proposal for Fiscal Year 1989 included the costs associated with personnel within the Water Quality Management Element which conducted ECRA reviews on NJPDES permitted facilities. These costs were deleted from the final proposal presented on August 25, 1988.

COMMENT: One commenter stated that the toxicity weighting factors (risk factors) of 10,000 for "Petroleum Hydrocarbons" and 100 for "Oil and Grease" should be the same since neither parameter measures a

specific chemical compound. The commenter stated that Petroleum Hydrocarbons are a subset of the types of compounds measured by the Oil and Grease procedure. In accordance with N.J.A.C. 7:14A-14.7, an oil refinery is required to use test method 418.1 for "Petroleum Hydrocarbons" while a food processing plant uses test method 413.1 for "Oil & Grease". The food processing plant could easily have oil fired boilers and use significant quantities of lubricating oil. Generally, the Department's assumption that the petroleum fractions captured by the "Petroleum Hydrocarbons" procedure are inherently more toxic than those captured by the "Oil & Grease" procedure is without technical merit. Further, as the Department phases out the cube root factor, the cost associated with "petroleum hydrocarbons" which is currently four times more than "oil and grease" will increase 100 times when the no root factor is used.

RESPONSE: The Department's Division of Science and Research developed the toxicity weighting factors for the NJPDES fee methodology pursuant to the New Jersey Superior Court's recommendation that all pollutants and their associated risk be considered in the fee assessment. (*Public Service Electric and Gas v. Department of Environmental Protection*, 193 *N.J. Super.* 676 (App. Div. 1984), *aff'd* 101 *N.J.* 95 (1985)). Oil and Grease, which is used to evaluate discharges with primarily animal-based oils, was assigned a rating of 100. Petroleum hydrocarbons, which measures petroleum-based pollutants, was assigned a rating of 10,000. The Department establishes individual discharge limitations and monitoring requirements after evaluating the specific nature of the discharge, treatment process and the receiving stream. During the permit development process, the appropriate parameters and limitations are set by the Department. The fee assessment is based on the specific parameters established in the NJPDES permit. The Department believes that the toxicity rating factors for oil and grease and petroleum hydrocarbons continue to be appropriate.

COMMENT: The Department should institute a project to determine which upstream polluters are primarily responsible for the toxic quality of the water in Saw Mill Creek.

RESPONSE: As an outgrowth of the 1987 Amendments to the Federal Clean Water Act, the Department is developing an ongoing program to identify surface waters impacted by toxics. Within the NJPDES discharge to surface water permit program, there is an emphasis on placing greater toxics controls on permittees. This has resulted in the Department implementing chronic whole effluent toxicity requirements for the first time. The Department also plans on placing additional chemical specific water quality based toxic limits on both industrial and municipal dischargers.

COMMENT: The Department's presentation of the individual fee assessment is not understandable. The computer printouts do not explain how loadings are calcaluated and how a permittee is assigned a stream rating factor.

RESPONSE: The Department agrees that the current fee assessment documentation could be made easier to understand. The new computer system currently under development should result in significant improvements. The actual fee is calculated in accordance with the NJPDES fee regulations (N.J.A.C. 7:14A-1.8), and based on the average reported loadings of all limited pollutants, the risk associated with each of these pollutants, a bioassay factor and a stream rating factor. The reported pollutant loadings are obtained form Discharge Monitoring Reports filed by the permittee for the specific time period. These values are averaged for the 12 month period. The risk factors are presented in Table 1 of the fee regulations. The stream rating factor is assigned based on a closest downstream rated stream segment and is based on the Water Quality Index divided by 100, Water Use Index divided by 50 and Designated Use Factor assigned by the Department in the biannual New Jersey Water Quality Inventory Report (305(b) Report). The values used to calculate the stream rating factor are also presented in the Annual Fee Report.

COMMENT: One commenter indicated that his permit fee increased over 1800 percent over the last four years while the associated discharge quality has improved. Also, the environmental impact used to calculate his fee has fluctuated greatly over the past several years. For this reason, he believed that the associated permit fee should be decreasing instead of increasing.

RESPONSE: The fee assessment formula for Discharges to Ground Water was originally based on the actual pollutant loadings. The amendments adopted on June 12, 1987, allowed the Department to calculate fees for facilities that no longer had an active discharge. For this reason, individual environmental impacts have fluctuated. Concurrently, funding available from general State revenues ceased on June 30, 1987 and beginning July 1, 1987 the entire cost associated with the NJPDES program was assessed as permit fees.

COMMENT: Technical factors used to calculate the environmental impact for ground water permits appears to be inconsistent with the actual permit.

RESPONSE: The NJPDES regulations provide the permittee 30 days to request a fee recalculation if they believe that the Department has made an error. The Department does not require the permittee to pay the contested fee assessment until all concerns have been addressed by the Department.

COMMENT: The Department should provide a lower "Pollutant Type" rating to reflect the high level of treatment provided at some sewage treatment plants.

RESPONSE: In accordance with N.J.A.C. 7:14A-1.8(d)1i, all sanitary wastewater is assigned a rating of 2. This assignment is based on the pollutants present in the wastewater. In the future, the Department will consider a lower rating for highly treated sanitary wastewater.

COMMENT: One commenter stated that the fee assessments for all sewage treatment plants should be based on the same parameters, specifically, BOD, TSS, and toxicity. The Department should not include Ammonia Nitrogen, Nitrate Nitrogen and Total phosphorus in the fee assessments for the few facilities that are required to remove and have limits for these parameters.

RESPONSE: The fee methodology for surface water discharges is based on all limited pollutants. The Wastewater Facilities Management Element establishes site specific permit conditions for each facility in this permit development process. Permit limitations are based on what is necessary to protect the environment from each individual discharge. Effective July 1, 1988, all facilities are required to meet water quality based effluent limitations. As a result, most facilities now have limits for nitrogen and/or phosphorus or were required to perform studies so that limits could be established.

COMMENT: The use of a stream rating factor is not a reasonable way to assess what percentage of the NJPDES budget should be paid for by a polluter. The stream rating factor is illegal, arbitrary and capricious and lacks statutory authority.

RESPONSE: The inclusion of a Stream Rating Factor is consistent with the Department's intent to assess permit fees based on the environmental impact and risk. The stream rating factors recognize that this risk is, in part, related to the nature of the receiving water. In 1987, the Department proposed the incorporation of a multi-faceted stream rating factor based on comments received at prior public hearings on the NJPDES fee schedule. The stream rating factor is comprised of a Water Quality Index, a Water Use Index, and a Designated Use Factor with a theoretical range of zero to four. The denominators for the Water Quality Index and the Water Use Index are 100 and 50, respectively. These denominators were selected to maintain a relatively equal relationship between the three components of the Stream Rating Factor. The values range from zero to one for all three components. Generally, the watersheds with good water quality and low water use which meet all designated uses will receive the lowest multiplier. Stream Rating Factors were assigned to 1,117 permittees. The average, minimum, and maximum Stream Rating Factors assigned were 1.13, 0.08 and 1.79, respectively.

COMMENT: A discharger's NJPDES permit fee is based on its discharge from the preceding year. When a particular parameter is removed for the upcoming year, how does the Department decrease the discharger's fee?

RESPONSE: The Department utilizes the reported pollutant loadings for the 12 month period ending 12 months before the current billing period begins. These loadings are based on the permit limitations effective at that time. In 1989, for the 1990 billing period, the Department implemented a procedure to allow permittees to calculate their own environmental impact before the Department published the Annual Fee Report. Any changes, problems or errors that a permittee believes will affect its environmental impact should be reported to the Department at this time. This procedure should address the problem identified by the commenter.

COMMENT: The Water Pollution Control Act states that the Department is only allowed to assess fees on the basis of processing, monitoring and administering NJPDES permits. The statute does not clearly state enforcement. Another commenter stated that the Department should only fund compliance inspections through the NJPDES fee program. It is unreasonable to expect permittees to fund enforcement action against another discharger. Enforcement cost including case development and Deputy Attorney General referrals are not related to permit issuance and should be funded from other sources.

RESPONSE: The Department utilizes NJPDES fees to fund enforcement activities against NJPDES permittees including compliance evalu-

ations and inspections, the issuance of Notices of Violations (NOV's), and the preparation of Administrative Orders and Administrative Consent Orders. Once an enforcement action is issued by the Department, personnel costs are charged against the State Enforcement Account and not NJPDES fees. Thus fees are limited to those activities that fairly fall within the definition of processing, monitoring and administering NJPDES permits and do not include litigation costs.

COMMENT: The Department improperly assessed $1.1 million for enforcement activities.

RESPONSE: The Department disagrees. The NJPDES budget includes $1.1 million for monitoring NJPDES permits which must include the review of Discharge Monitoring Reports, compliance inspections and evaluations, the issuance of Notices of Violations (NOV's) and the preparation of Administrative Orders and Administrative Consent Orders. Follow-up enforcement action is not funded with NJPDES fees.

COMMENT: The Department has included costs which are well above the reasonable costs of processing, monitoring and administering the NJPDES permits. The decision to include one-third of the work years associated with the Division of Water Resources Management Services Element is unreasonable, because only one of seven or eight operating elements are involved with permit issuance and that section being one of several sections within the element.

RESPONSE: The Management Services Element within the Division of Water Resources performs general administrative support services such as the Division Central File Room, Computer Operations, Personnel, Financial Management, and Division Director's Office. One-third of the work years performed in the Division of Water Resources are involved with the processing, monitoring and administering of NJPDES permits. Therefore, the Department funded 10 of the 30 work years in the Management Services Element through NJPDES permit fees.

COMMENT: A commenter requested that the Department explain the multiple layers of "administrative costs" included in the NJPDES budget. The Department has included 24 percent as an indirect rate, $1.4 million for administrative costs outside the Division and $842,000 for Management Services. Without an explanation, it is not possible to comment on whether the "Up-Front" assessments are reasonable.

RESPONSE: While the NJPDES budget includes various administrative activities, many are encompassed under the broad category of Indirect Ccost. Indirect costs are those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assigned to the cost objectives specifically benefited without effort disproportionate to the results achieved.

The indirect rate is negotiated on an annual basis between the Department of Environmental Protection and the United States Environmental Protection Agency which is the cognizant agency for the Department. In accordance with Federal OMB Circular A-128, one Federal agency, that is, the EPA, is designated as the cognizant Federal agency which reviews and approves the indirect cost rate on an annual basis. The basis for applying the indirect cost rate is for the sum of direct salaries plus associated fringe benefits. The components of the Department's indirect cost rate include salary costs plus associated fringe benefits for the department management and divisional indirect offices. Building rent and the Department allocation from the Statewide Cost Allocation Plan are also included.

Although the FY89 negotiated indirect rate is 32.70 percent, charges to the NJPDES program have not exceeded this established rate. The utilization of an indirect cost rate, and its assignment against the basis noted above, is in conformance with generally accepted accounting principles and is recognized as a standard cost recovery mechanism, both in industry and in government. In addition, these annual negotiated rates are subject to audit by the designated cognizant audit agency.

As such, the Department feels that the various administrative activities contained under the umbrella of the indirect cost rate are in fact appropriate to charge the NJPDES program as is done with all other non-State funded programs.

HUMAN SERVICES

(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Public Forums

1990 Report on Services and Programs

Take notice that the New Jersey Developmental Disabilities Council will hold three regional public forums to gather testimony from consumers of human services, parents or guardians, and advocates concerning the needs of unserved or underserved New Jerseyans with developmental disabilities. The forums are mandated by the 1987 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act, which require each State Planning Council to submit to the federal government a 1990 report on the effectiveness of services and programs to people with developmental disabilities. The forums will be held as follows:

November 27, 1989
3:30 P.M.-5:30 P.M.
7 P.M.-9 P.M.
Atlantic County Vocational School
2000 New Jersey Avenue
Mays Landing, New Jersey

November 29, 1989
2 P.M.-4 P.M.
7 P.M.-9 P.M.
Middlesex County College
Woodbridge Road
Edison, New Jersey

December 1, 1989
2 P.M.-4 P.M.
7 P.M.-9 P.M.
Bergen Community College
400 Paramus Road
Paramus, New Jersey

Written testimony is preferred. Oral testimony should be limited to five minutes. Those who pre-register will receive a draft of the preliminary report prior to the forums. **For more information,** contact Greg Mizanin, Developmental Disabilities Council, (609) 292-3745.

LABOR

(b)

OFFICE OF THE CONTROLLER

Remuneration

Take notice that, in accordance with N.J.A.C. 12:16-4.8, the Department of Labor hereby publishes notice of the following dollar equivalents of board and room, meals and lodging furnished by employers in lieu of money wages during calendar year 1990:

Full board and room, weekly	$93.60
Lodging, per week	40.10
Meals per day	10.70

If less than three meals per day, individual meals shall be valued as follows:

Breakfast	$3.20
Lunch	3.20
Dinner	4.30

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Medical Examiners Notice of Petition for Rulemaking Surgical Assistants

N.J.A.C. 13:35

Petitioner: Ames L. Filippone, Jr., M.D.
Authority: N.J.S.A. 52:14B-4(f).

Take notice that on June 15, 1989, petitioner filed a petition with the State Board of Medical Examiners requesting the Board to promulgate rules and regulations to authorize the practice of surgical assistants within the State of New Jersey.

A portion of the petition follows:

Petitioner proposes "that non-physician Surgical Assistants or Physician Assistants with surgical training who have graduated from a formal Surgical/Physician Assistants Program be permitted to perform the following under direct supervision of the surgeon who will remain in the Operating Room during the entire surgical procedure. The assistant will perform the following tasks in the Operating Room:

First assist on cases where an M.D. is not required and second assist on other cases;

Prep and drape the patient;

Retract;

Aspirate;

Cut and tie sutures;

Suture and harvest veins for cardiac surgery;

Close routine incisions.

Before the assistant will be permitted to attend to patients outside of the Operating Room his/her competence will be determined by direct observation by the supervising physician who assumes full legal responsibility. Once the physician is satisfied with the level of expertise of the assistant, he/she will be permitted to perform the following functions under indirect supervision:

Change dressings;

Remove sutures and skin clips;

Apply and remove plaster casts;

Remove chest tubes;

Give injections;

Start intravenous infusions and blood transfusions;

Draw blood;

Perform H & P (History and Physical) and pre-operative evaluations of patients;

Dictate discharge summaries."

Petitioner states that it is evident that these functions are non-judgmental, repetitive, routine actions which can be readily learned by non-physicians with appropriate training and that permitting the performance thereof would bring New Jersey into conformity with the rest of our national medical community.

After due notice, this petition will be considered by the State Board of Medical Examiners in accordance with the provisions of N.J.S.A. 52:14B-4(f).

(b)

DIVISION OF CONSUMER AFFAIRS

Notice of Denial of Petitions for Rulemaking to Exempt Petitioners from N.J.A.C. 13:45A-16, Home Improvement Practices

Petitioners: 1. Peter Horan, Albert Hoesley, Jr., Lighthouse Electrical Construction, Inc., and New Jersey State Council of Electrical Contractor Associations, Inc., a non-profit corporation of the State of New Jersey. 2. New Jersey State League of Master Plumbers, Inc.

A Notice of Petition to amend or invalidate the Home Improvement Practices rules, N.J.A.C. 13:45A-16, as related to licensed electrical contractors, was published in the Register on January 3, 1989 at 21 N.J.R. 71(c). A similar Notice of Petition to amend or invalidate the Home Improvement Practices rules as related to licensed master plumbers was published in the Register on March 20, 1989 at 21 N.J.R. 798(a).

The Division, after reviewing the petitions and meeting with representatives of both groups, has concluded that the petitions should be denied for the reasons enunciated in the Division's earlier responses (see 21 N.J.R. 798(a) and 21 N.J.R. 1160(c)), which may be restated as follows:

Factors other than professional competence are involved in a home improvement project; not only must work be performed properly, but also the consumer must be protected against being otherwise defrauded. Supplemental regulation, designed to safeguard the consumer with respect to aspects of a home improvement transaction that do not directly involve occupational competence, furthers the policy of the licensing acts.

However, the Division is concurrently proposing to increase the threshold for a written home improvement contract from $25.00 to $200.00, a move which will eliminate the written contract requirement for a considerable number of petitioners' jobs.

(c)

STATE BOARD OF OPTOMETRISTS

Petition for Rulemaking and Action Thereon Practice of Optometry

N.J.A.C. 13:38

Petitioner: New Jersey Optometric Association.
Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 45:12-4.

Take notice that on June 22, 1989, petitioner filed the following petition with the State Board of Optometrists:

Petitioner, the New Jersey Optometric Association, a not-for-profit New Jersey Corporation having its principal place of business at 88 Lakedale Drive, Trenton, New Jersey, by way of Petition for Rulemaking, says:

1. Petitioner is a not-for-profit New Jersey Corporation composed of New Jersey licensed optometrists.

2. Respondent is the administrative agency charged by law with the regulation of the practice of optometry and able to adopt rules and regulations pursuant to N.J.S.A. 45:12-4 "to promote the safety, protection and welfare of the public" and to define permissible practices by optometrists.

3. The "practice of optometry," pursuant to N.J.S.A. 45:12-1, includes the (a) "employment of objectives or subjective means, or both, for the examination of the human eye for the purposes of ascertaining any departure from the normal; and (b) "use (of) testing appliance for the purpose of measurement of the powers of vision or diagnose any ocular deficiency or deformity, visual or muscular anomaly of the human eye."

4. Respondent, pursuant to N.J.S.A. 45:12-26, is the "board, body or person empowered by law to award (such) right or title" to persons practicing optometry "to use any therapeutic measures or agencies other than those included in the practice of optometry as defined in section 45:12-1."

5. Petitioner commences this action to require the New Jersey State Board of Optometrists to address and determine the use and prescription of pharmaceutical and therapeutic measures or agencies by optometrists for the purposes of diagnosing and treating deficiencies, deformities, diseases, or anomalies of the human eye.

6. Petitioner prays that the New Jersey State Board of Optometrists construe the provisions of N.J.S.A. 45:12-26 and determine and declare:

A. The "practice of optometry" shall include the use and prescription of pharmaceutical agents for the purposes of treating deficiencies, deformities, diseases or anomalies of the human eye including the removal of superficial foreign bodies from the eye and adnexae;

B. That "prescription" shall mean an order for drugs or medicines or combinations of mixtures thereof, written or signed by duly licensed medical practitioner, including an optometrist licensed to write prescriptions intended for the treatment or prevention of disease;

C. That the New Jersey State Board of Optometrists prescribe the application form, procedure and fees for certification for the use and prescription of pharmaceutical agents for treatment purposes in the practice of optometry and promulgate the rules and regulations necessary to effectuate those purposes;

D. That the New Jersey State Board of Optometrists establish the testing and continuing education requirements which shall be fulfilled before a person may be certified to use or prescribe pharmaceutical agents for treatment purposes in the practice of optometry;

E. An optometrist utilizing pharmaceutical agents for treatment purposes shall be held to a standard of patient care in the use of such agents commensurate to that of a physician utilizing ocular pharmaceutical agents for treatment purposes; and

F. Whenever in any law there is a requirement or duty with respect to the prescription, administration or dispensing of any drug which applies to any person authorized to prescribe, administer or dispense that drug, the same shall apply to an optometrist when prescribing, administering or dispensing a pharmaceutical agent.

In response to this petition, the State Board of Optometrists, at its public meeting of September 20, 1989, referred the matter to a subcommittee for further deliberation. Anyone wishing to submit comments is invited to do so, to the New Jersey State Board of Optometrists, 1100 Raymond Blvd., Room 501, Newark, N.J. 07102. Any further action taken by the State Board of Optometrists will be noticed in the New Jersey Register.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments—Month of September 1989

Solicitation of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated September 1, 1989.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
S263	Renovations to Knights Farm DCJ Training Academy Division of State Police W. Trenton, NJ	Matthew L. Rue, AIA	$430,000
C412	Reroofing-Laundry Building East Jersey State Prison Rahway, NJ	Westinghouse Environmental & Geotechnical Services, Inc.	$400,000
A599	Three Tier Shelving Structural Analysis Library for the Blind & Handicapped Trenton, NJ	D'Huy Engineering, Inc.	$ 9,734 Services
J060	Facility Consultant—FY 90 Office of Leasing Operations	O'Brien-Kreitzberg & Assoc.	$ 50,000 Services
M081	Geotechnical Report Cottages No. Princeton Developmental Ctr. Skillman, NJ	Melick-Tully Assoc., Inc.	$ 4,700 Services
J062	Facility Consultant—FY 90 Office of Leasing Operations	Franklyn B. Spiezle, AIA	$ 35,000 Services
P638	Structural Evaluation General Store Allaire Village Allaire State Park Monmouth Co., NJ	Holt & Morgan Assoc., PA	$ 20,900 Services
	COMPETITIVE PROPOSALS		
	Holt & Morgan Assoc.	$20,900 Lump Sum	
	Herbert J. Githens, Architect	$23,910 Lump Sum	
	Short & Ford, Architects	$24,600 Lump Sum	
	Leon Fuller Parham Assoc.	$29,850 Lump Sum	
M1012	Replacement of Air Conditioning Units Woodbine Developmental Center Woodbridge, NJ	Urban Engineering, Inc.	$300,000
	COMPETITIVE PROPOSALS		
	Urban Engineers, Inc.	$27,898 Lump Sum	
	Anastasio & Melick Assoc., Inc.	$33,215 Lump Sum	
	Stone & Webster Eng. Corp.	$45,100 Lump Sum	
	Seeler-Smith, Inc.	$59,850 Lump Sum	

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Petition to Amend N.J.A.C. 19:4-6.28, Official Zoning Map

Petitioner: Martin Santini, A.I.A., Architect for GEI Real Estate.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on August 15, 1989 Martin Santini, A.I.A., filed a petition with the Commission on behalf of GEI Real Estate for an amendment to the HMDC zoning map for Block 106, Lot 13.06 and Block 107, Lot 1 in the Borough of Little Ferry, New Jersey in order to rezone the property from Light Industrial "B" to Low Density Residential.

Hackensack Meadowlands Development Commission's Response

The Commission Staff inspected the subject site and determined that since the Commission is currently reevaluating its Master Plan it would be most appropriate to review this request not only on a parochial basis but with regard to the overall regional planning. In addition to the property in question, Staff intends to evaluate the adjacent zoning and existing uses and their potential for change. The Commission also finds it appropriate to assess the potential for a Waterfront Recreation zone designation as compared to the request for a change to Low Density Residential, especially since the site is located upon the Hackensack River. Additionally, this study will investigate the potential for including other adjacent parcels within this rezoning request.

The Commission has granted Staff three months from September 27, 1989 in which to further study this proposed rezoning. **Interested parties** may address their comments and inquiries to:

Deborah A. Lawlor, P.P.
Supervisor of Land Use Planning
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The Hackensack Meadowlands Development Commission is not prepared to initiate rulemaking on this issue at this time. Further study and discussions within the Commission remain necessary prior to such formal regulatory action. After consideration of this study and comments received, the Commission shall address the issue pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Petition to Amend N.J.A.C. 19:4-6.28, Official Zoning Map

Petitioner: Brancasons.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on August 17, 1989, Brancasons filed a petition with the Commission for an amendment to the HMDC zoning map for Block 123, Lots 7, 8 and 9 (old Block 151, Lots 14, 15 and 16) in the Borough of Carlstadt, New Jersey, in order to rezone the property from Marshland Preservation to Light Industrial "B".

Hackensack Meadowlands Development Commission's Response

The Commission Staff has inspected the site and determined that rezoning the Marshland Preservation zone (the District's most environmentally sensitive zone) in this area should be assessed to determine the ramification of altering the zone along Berry's Creek and Peach Island Creek wetland areas. The Commission has entered into an agreement to conduct a Special Area Management Plan (SAMP) with the EPA and Army Corps of Engineers of all wetland areas within the District to

determine their potential under the Federal Clean Water Act. This request should be considered in conjunction with the current SAMP deliberations. Additionally, Berry's Creek exhibits flooding potential. This parcel is directly adjacent to the creek, and rezoning may have an effect upon flood levels of this and adjacent properties, both up and downstream, in addition to potentially affecting water quality. These issues would need to be studied in conjunction with the rezoning request. Further, the request is made at a time when the Commission is reviewing and amending its original Master Plan. This request should be analyzed in the context of a comprehensive approach to the Master Plan revisions and land use planning to assure the continued and future solidity of the Commission's zoning regulations. Also, the NJDEP is currently conducting a study of potential mercury and other contamination in the Berry's Creek drainage basin. This particular area in which the property is located is specifically included in the study. The rezoning proposal should take into consideration the NJDEP study.

The Commission has granted Staff three months from September 27, 1989, or the subsequent date of a regular meeting, in which to further study this proposed rezoning. **Interested parties** may address their comments and inquiries to:

Deborah A. Lawlor, P.P.
Supervisor of Land Use Planning
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The Hackensack Meadowlands Development Commission is not prepared to initiate rulemaking on this issue at this time. Further study and discussions within the Commission remain necessary prior to such formal regulatory action. After consideration of this study and comments received, the Commission shall address the issue pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Petition for Rulemaking
Interest Arbitration
N.J.A.C. 19:16-5.7

Petitioner: Gerald L. Dorf, esq., an attorney representing the Township of Wayne.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 19:10-6.1.

Take notice that on September 22, 1989, petitioner requested the Commission to rescind the last sentence of N.J.A.C. 19:16-5.7. That sentence states: "Any [interest arbitration] hearings conducted shall not be public unless the parties and the arbitrator agree to have them public." The petitioner proposes that interest arbitration proceedings be public upon the request of either the public employer or majority representative. This petition will be considered by the Public Employment Relations Commission in accordance with N.J.A.C. 19:10-6.1.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:33	9/18/94
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/89
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93

N.J.A.C.	Expiration Date
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	4/10/94
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93

N.J.A.C.	Expiration Date
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	9/29/94
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
10:109	3/17/91
10:120	8/21/91
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	12/3/89

N.J.A.C.	Expiration Date
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	8/14/94
12:35	8/5/90
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	9/22/94
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	9/27/94
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	2/11/90
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	3/6/94
16:6	8/7/94
16:7	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	3/18/90
16:51	4/6/92
16:53	7/17/94
16:53A	4/15/90
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 5, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 21, 1989

NEXT UPDATE: SUPPLEMENT SEPTEMBER 18, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 3047 and 3182	December 19, 1988
21 N.J.R. 1 and 88	January 3, 1989
21 N.J.R. 89 and 224	January 17, 1989
21 N.J.R. 225 and 364	February 6, 1989
21 N.J.R. 365 and 588	February 21, 1989
21 N.J.R. 589 and 658	March 6, 1989
21 N.J.R. 659 and 810	March 20, 1989
21 N.J.R. 811 and 954	April 3, 1989
21 N.J.R. 955 and 1036	April 17, 1989
21 N.J.R. 1037 and 1178	May 1, 1989

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 1179 and 1474	May 15, 1989
21 N.J.R. 1475 and 1598	June 5, 1989
21 N.J.R. 1599 and 1762	June 19, 1989
21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 3331 and 3584	November 6, 1989

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of transmitted cases	21 N.J.R. 3207(a)		
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
	Most recent update to Title 1: TRANSMITTAL 1989-5 (supplement August 21, 1989)			
AGRICULTURE—TITLE 2				
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)		
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)		
2:76-6.16	Farmland Preservation Program: easement purchase evaluation criteria	21 N.J.R. 2152(a)	R.1989 d.537	21 N.J.R. 3294(a)
	Most recent update to Title 2: TRANSMITTAL 1989-7 (supplement August 21, 1989)			
BANKING—TITLE 3				
3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:13-3.2	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	21 N.J.R. 2399(a)	R.1989 d.511	21 N.J.R. 3083(a)
3:18-10.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(a)
3:19-1.7	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:23-2.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)	R.1989 d.486	21 N.J.R. 2956(a)
3:24-1.2	Check cashing business standards: administrative correction concerning corporate applications	———	———	21 N.J.R. 3448(a)
3:24-5.1	Check cashing facilities: administrative correction	———	———	21 N.J.R. 2784(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)	R.1989 d.500	21 N.J.R. 2957(a)
3:38-1.1, 1.2	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(b)
3:38-1.8	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
	Most recent update to Title 3: TRANSMITTAL 1989-4 (supplement August 21, 1989)			
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
	Most recent update to Title 4: TRANSMITTAL 1988-4 (supplement July 17, 1989)			
PERSONNEL—TITLE 4A				
4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:3-2.2	Designation of SES positions: administrative correction	———	———	21 N.J.R. 3295(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:3-4.17, 4.21	Compensation: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:4-2.1, 2.15, 3.4, 5.5	Promotional examinations; eligible lists	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:4-2.3, 2.9, 2.15, 5.2, 6.3–6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:6-1.5	Sick leave: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
4A:10-1.1	Information requested of appointing authority	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
	Most recent update to Title 4A: TRANSMITTAL 1989-2 (supplement July 17, 1989)			
COMMUNITY AFFAIRS—TITLE 5				
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)		
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)		
5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11, 4.13	Uniform Fire Code inspection, safety and enforcement provisions	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18-2.6, 2.7, 2.11, 2.18, 3.2, 4.9, 4.18	Uniform Fire Code: administrative corrections	_____	_____	21 N.J.R. 3085(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18-3.2	Uniform Fire Code: casino hotel fire safety plan	21 N.J.R. 2845(b)		
5:18A-2.6	Fire Code Enforcement: fee collection remittance	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18A-3.3	Duties of fire officials	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18A-4.9	Fire Code Enforcement: administrative correction	_____	_____	21 N.J.R. 3085(a)
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)	R.1989 d.550	21 N.J.R. 3458(a)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.5	Uniform Construction Code: educational facility use group	21 N.J.R. 2783(a)	R.1989 d.555	21 N.J.R. 3460(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	UCC: assumption of local enforcement powers	21 N.J.R. 2436(a)	R.1989 d.551	21 N.J.R. 3460(b)
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)	R.1989 d.526	21 N.J.R. 3295(b)
5:31	Local authorities	21 N.J.R. 3046(a)		
5:33	Urbanaid program	21 N.J.R. 3046(b)		
5:35	State aid for planning local effectiveness program	21 N.J.R. 3046(b)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)	R.1989 d.524	21 N.J.R. 3090(a)
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)	R.1989 d.534	21 N.J.R. 3295(c)
5:92-12 App.	Uniform deed restrictions and liens: controls on affordability	21 N.J.R. 1988(a)	R.1989 d.527	21 N.J.R. 3091(a)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1989-8 (supplement August 21, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

EDUCATION—TITLE 6

6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)		
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)		
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)		
6:11-5.1–5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)		
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)		
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)		
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)		
6:21	Pupil transportation	21 N.J.R. 2724(a)		
6:22-1.1, 1.3, 1.4, 1.7, 1.8, 2.5	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)	R.1989 d.553	21 N.J.R. 3461(a)
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:29-9.2, 9.3, 9.5, 9.6	Substance abuse control and education	21 N.J.R. 1603(a)	R.1989 d.480	21 N.J.R. 2784(b)
6:31	Bilingual education	21 N.J.R. 2443(a)		
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)	R.1989 d.479	21 N.J.R. 2786(a)
6:70	Library network services	21 N.J.R. 1940(a)	R.1989 d.572	21 N.J.R. 3462(a)

Most recent update to Title 6: TRANSMITTAL 1989-7 (supplement August 21, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)	R.1989 d.544	21 N.J.R. 3478(a)
7:1G-3.2	Worker and Community Right to Know: administrative correction concerning environmental survey	———	———	21 N.J.R. 3482(a)
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)	R.1989 d.566	21 N.J.R. 3482(b)
7:2-11.12	Designation of West Pine Plains to Natural Areas System: extension of comment period	21 N.J.R. 2240(b)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)	R.1989 d.492	21 N.J.R. 2958(a)
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)		
7:7A-2.7(d)1, 2	Preliminary municipal approvals exemption: notice of rule invalidation	———	———	21 N.J.R. 3482(c)
7:7A-2.7(f)	Transition area exemption: notice of rule invalidation	———	———	21 N.J.R. 3482(d)
7:10	Safe Drinking Water Act	21 N.J.R. 1945(a)	R.1989 d.514	21 N.J.R. 3098(a)
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)	R.1989 d.501	21 N.J.R. 2962(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)	R.1989 d.517	21 N.J.R. 3099(a)
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:19-6.10(c), (d)2	Reduction of privilege to withdraw water: notice of rule invalidity	———	———	21 N.J.R. 2786(b)
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)	R.1989 d.502	21 N.J.R. 2963(a)
7:25-2.20	Higbee Beach Wildlife Management Area	21 N.J.R. 2849(a)		
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)	R.1989 d.567	21 N.J.R. 3483(a)
7:25-12	Surf clam management	21 N.J.R. 3214(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)		
7:26-3A	Regulated medical wastes	21 N.J.R. 2109(a)	R.1989 d.506	21 N.J.R. 2967(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26-16.5, 16.13	Solid and hazardous waste operations: licensing of individuals	21 N.J.R. 2275(a)		
7:27-10.2	Sulphur contents standards: administrative correction	———	———	21 N.J.R. 2991(a)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)		
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)	R.1989 d.568	21 N.J.R. 3488(a)
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

Most recent update to Title 7: TRANSMITTAL 1989-8 (supplement August 21, 1989)

HEALTH—TITLE 8				
8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)	R.1989 d.557	21 N.J.R. 3501(a)
8:23	Veterinary public health	21 N.J.R. 3274(a)		
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-1)	21 N.J.R. 2447(a)		
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)		
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)		
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)		
8:31B-3.66	Hospital reimbursement: adjusted admission fee ceiling	21 N.J.R. 1606(a)	R.1989 d.472	21 N.J.R. 2787(a)
8:31B-3.73	Hospital reimbursement: rates adjustment and reconciliation	21 N.J.R. 1606(b)	R.1989 d.471	21 N.J.R. 2787(b)
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)	R.1989 d.491	21 N.J.R. 2991(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)		
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on: extension of comment period	21 N.J.R. 3279(a)		
8:31B-4.38–4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)		
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)		
8:31B-5.3	Diagnosis Related Groups: administrative correction	———	———	21 N.J.R. 3297(a)
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3279(b)		
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)	R.1989 d.490	21 N.J.R. 2992(a)
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)		
8:31C-1.2, 1.3, 1.4, 1.6, 1.12, 1.17	Residential alcoholism treatment facilities: rate setting and reimbursement	21 N.J.R. 2454(a)	R.1989 d.558	21 N.J.R. 3505(a)
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)		
8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7	Home health agency services	21 N.J.R. 2455(a)	R.1989 d.559	21 N.J.R. 3506(a)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:39-44	Respite care services	21 N.J.R. 2924(a)		
8:42A-13.3	Alcoholism treatment facilities: administrative corrections	———	———	21 N.J.R. 3172(a)
8:43B-1-17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)		
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)		
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)	R.1989 d.560	21 N.J.R. 3509(a)
8:43E-4.5	Child and adolescent acute psychiatric beds: need formula	21 N.J.R. 2459(a)	R.1989 d.561	21 N.J.R. 3514(a)
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(a)		
8:43G-6	Anesthesia	21 N.J.R. 2925(a)		
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:52-4.6	Local boards of health: basic educational program concerning HIV infection	21 N.J.R. 2696(a)		
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)	R.1989 d.543	21 N.J.R. 3516(a)
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:65-10.1	Controlled Dangerous Substances: addition to Schedule I	———	———	21 N.J.R. 3297(b)
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c))	21 N.J.R. 662(a)	R.1989 d.487	21 N.J.R. 2996(a)
8:71	Interchangeable drug products	21 N.J.R. 1488(a)	R.1989 d.488	21 N.J.R. 2996(b)
8:71	Interchangeable drug products	21 N.J.R. 1790(a)	R.1989 d.489	21 N.J.R. 2997(a)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)		

Most recent update to Title 8: TRANSMITTAL 1989-8 (supplement August 21, 1989)

HIGHER EDUCATION—TITLE 9

9:4-1.3, 1.9, 1.10, 2.1–2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:9-11.1	Guaranteed Student Loan Program: institution compliance	21 N.J.R. 1962(a)	R.1989 d.519	21 N.J.R. 3173(a)
9:11-1.5	Educational Opportunity Fund: eligibility for undergraduate grants	21 N.J.R. 1489(a)	R.1989 d.468	21 N.J.R. 2788(a)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)		

Most recent update to Title 9: TRANSMITTAL 1989-4 (supplement August 21, 1989)

HUMAN SERVICES—TITLE 10

10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)		
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:49-1.1	Medicaid eligibility: administrative correction	———	———	21 N.J.R. 2789(a)
10:49-1.1, 1.2	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)	R.1989 d.498	21 N.J.R. 2998(a)
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)	R.1989 d.499	21 N.J.R. 3000(a)
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)	Expired	
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:65	Medical Day Care Program	21 N.J.R. 1794(a)	R.1989 d.504	21 N.J.R. 3005(a)
10:66-1.5	Independent clinic providers: prior authorization for mental health services	21 N.J.R. 1794(b)	R.1989 d.503	21 N.J.R. 3005(b)
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-6.1, 6.3	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)	R.1989 d.498	21 N.J.R. 2998(a)
10:81	Public Assistance Manual	21 N.J.R. 1795(a)	R.1989 d.496	21 N.J.R. 3006(a)
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)	R.1989 d.465	21 N.J.R. 2789(b)
10:82	Assistance Standards Handbook; AFDC Program	21 N.J.R. 1811(a)	R.1989 d.497	21 N.J.R. 3014(a)
10:85	General Assistance Manual	21 N.J.R. 3221(b)		
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:87-2.13, 2.30, 2.33, 2.36, 2.37, 4.8, 5.9, 6.2, 9.7	Food Stamp Program revisions	21 N.J.R. 1636(a)	R.1989 d.464	21 N.J.R. 2790(a)
10:87-12.1, 12.2, 12.3, 12.4, and 12.7	Food Stamp Program: Tables I, II, III, IV, and VII	Emergency (expires 11-21-89)	R.1989 d.533	21 N.J.R. 3316(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:121	Adoption of children	21 N.J.R. 3048(b)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)	R.1989 d.494	21 N.J.R. 3016(a)
	Most recent update to Title 10: TRANSMITTAL 1989-8 (supplement August 21, 1989)			
CORRECTIONS—TITLE 10A				
10A:4-6, 6.3, 6.4	Inmate discipline: chronic violator procedure	21 N.J.R. 3240(a)		
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-2.9	Infirmary care	21 N.J.R. 969(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)	R.1989 d.470	21 N.J.R. 2793(a)
10A:22-4	Expungement or sealing of inmate records	21 N.J.R. 2852(a)		
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		
	Most recent update to Title 10A: TRANSMITTAL 1989-7 (supplement August 21, 1989)			
INSURANCE—TITLE 11				
11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.1	FAIR Plan surcharge	21 N.J.R. 1816(a)	R.1989 d.478	21 N.J.R. 2796(a)
11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)		
11:1-26	Insurer profitability information: annual publication	21 N.J.R. 2181(a)	R.1989 d.538	21 N.J.R. 3297(a)
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-3.1, 3.12	Credit life and credit accident and health insurance premium rates	21 N.J.R. 3052(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-26	Insurers' annual audited financial reports	21 N.J.R. 3054(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-10.4	Adjustment of losses: administrative correction	———	———	21 N.J.R. 3173(b)
11:3-15.3, 15.5, 15.7–15.10	Automobile insurance: Coverage Selection Form	21 N.J.R. 3244(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:3-30	Motor vehicle self-insurance	21 N.J.R. 2876(a)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, App.; 23, App.	Sixty five-and-older health insurance coverage	21 N.J.R. 2877(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)	R.1989 d.522	21 N.J.R. 3173(c)
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)	R.1989 d.523	21 N.J.R. 3175(a)
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)	R.1989 d.571	21 N.J.R. 3465(a)
11:5-1.16	Real estate contracts: "agreement to honor" provision	21 N.J.R. 2438(b)	R.1989 d.539	21 N.J.R. 3299(a)
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)		
11:15-2.2, 2.13, 2.21	Joint insurance funds for local government units	21 N.J.R. 1494(b)	R.1989 d.507	21 N.J.R. 3017(a)
11:16-2	Reports to National Automobile Theft Bureau	21 N.J.R. 2901(a)		
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
11:18-1	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 2698(a)		

Most recent update to Title 11: TRANSMITTAL 1989-8 (supplement August 21, 1989)

LABOR—TITLE 12

12:15-1.3–1.7	Unemployment Compensation and State Plan Temporary Disability: 1990 rates	21 N.J.R. 2700(a)	R.1989 d.565	21 N.J.R. 3535(a)
12:20	Board of Review: appeals of unemployment benefit determinations	21 N.J.R. 1496(a)	R.1989 d.473	21 N.J.R. 2797(a)
12:20-6	Unemployment and disability insurance appeals: telephone hearings	21 N.J.R. 1644(a)	R.1989 d.474	21 N.J.R. 2798(a)
12:41-1	Job Training Partnership Act/N.J. Jobs Training Act: grievance procedures	21 N.J.R. 1498(a)	R.1989 d.475	21 N.J.R. 2799(a)
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-3	Vocational rehabilitation services: vehicle modification requirements	21 N.J.R. 2213(b)	R.1989 d.564	21 N.J.R. 3535(b)
12:46–12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:90	Boilers, pressure vessels and refrigeration	21 N.J.R. 3247(a)		
12:100	Safety and health standards for public employees	21 N.J.R. 2224(a)	R.1989 d.536	21 N.J.R. 3299(b)
12:100-4.2, 5.2	Public employee safety and health: hazardous waste operations and emergency response	21 N.J.R. 1646(a)	R.1989 d.476	21 N.J.R. 2800(a)
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-9.2	Public employee safety and health: work in confined spaces	21 N.J.R. 1647(a)	R.1989 d.477	21 N.J.R. 2800(b)
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:235-1.6	Workers' Compensation: 1990 maximum rates	21 N.J.R. 2701(a)	R.1989 d.563	21 N.J.R. 3545(a)

Most recent update to Title 12: TRANSMITTAL 1989-6 (supplement July 17, 1989)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-1, 2 (17:13, 17:14)	Small businesses, urban development enterprises; minority and female subcontractor participation	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		

Most recent update to Title 12A: TRANSMITTAL 1989-5 (supplement July 17, 1989)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-4.5	Police Training Commission: instructor certification	21 N.J.R. 1647(b)	R.1989 d.485	21 N.J.R. 3019(a)
13:19	Driver control service	21 N.J.R. 1817(b)	R.1989 d.493	21 N.J.R. 3019(b)
13:19-13	Supplemental motor vehicle insurance surcharges	21 N.J.R. 1817(b)	R.1989 d.493	21 N.J.R. 3019(b)
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)	R.1989 d.518	21 N.J.R. 3176(a)
13:20-3	Repeal (see 13:24)	21 N.J.R. 2460(a)	R.1989 d.542	21 N.J.R. 3299(c)
13:24	Emergency vehicle equipment	21 N.J.R. 2460(a)	R.1989 d.542	21 N.J.R. 3299(c)
13:30-1.2, 2.18, 8.1	Board of Dentistry licensure and registration fees	21 N.J.R. 2466(a)		
13:30-2.19	Inactive dental hygienists: resumption of practice	21 N.J.R. 1500(c)	R.1989 d.460	21 N.J.R. 2801(a)
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)		
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	21 N.J.R. 2226(a)		
13:35	Board of Medical Examiners rules	21 N.J.R. 2226(b)	R.1989 d.532	21 N.J.R. 3307(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:35-6.2	Pronouncement and certification of death	21 N.J.R. 1969(b)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)		
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)	R.1989 d.548	21 N.J.R. 3474(a)
13:36	State Board of mortuary science	21 N.J.R. 1971(a)	R.1989 d.540	21 N.J.R. 3474(b)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)		
13:38-1.2	Practice of optometry: unlawful advertising	21 N.J.R. 2467(a)	R.1989 d.552	21 N.J.R. 3475(a)
13:42-1.2	Board of Psychological Examiners: written examination fee	21 N.J.R. 1649(a)	R.1989 d.467	21 N.J.R. 2801(b)
13:44	Board of Veterinary Medical Examiners	21 N.J.R. 1501(a)	R.1989 d.459	21 N.J.R. 2801(c)
13:44-2.11	Advertising of veterinary practice: administrative correction	_____	_____	21 N.J.R. 3019(c)
13:44C-3.2, 7.2	Audiology and speech language pathology: licensure and practice	21 N.J.R. 2702(a)		
13:45B-4	Temporary help service firms	20 N.J.R. 2684(a)		
13:47-14.3	Rental or use of premises for bingo games	21 N.J.R. 2233(a)	R.1989 d.562	21 N.J.R. 3475(b)
13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:70-3.40	Horse racing: admittance of children to race track	21 N.J.R. 1972(a)	R.1989 d.547	21 N.J.R. 3475(c)
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)		
13:71-5.18	Harness racing: admittance of children to race track	21 N.J.R. 1972(b)	R.1989 d.546	21 N.J.R. 3476(a)
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)		
13:75-1.6	Violent crimes compensation	21 N.J.R. 2910(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		

Most recent update to Title 13: TRANSMITTAL 1989-8 (supplement August 21, 1989)

PUBLIC UTILITIES—TITLE 14

14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:2	Public movers: administrative deletion	_____	_____	21 N.J.R. 3020(a)
14:3-3.2	Customer's proof of identity	21 N.J.R. 2004(a)		
14:3-3.6	Utility service discontinuance	21 N.J.R. 1650(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	21 N.J.R. 1650(b)		
14:3-4.7	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	21 N.J.R. 2702(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)	R.1989 d.463	21 N.J.R. 2801(d)
14:11-7.2, 7.6–7.9	Solid waste uniform tariff	21 N.J.R. 2704(b)		

Most recent update to Title 14: TRANSMITTAL 1989-2 (supplement May 15, 1989)

ENERGY—TITLE 14A

14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:6-2	Business Energy Improvement Program	21 N.J.R. 2005(a)		
14A:8	Energy Facility Review Board	21 N.J.R. 2009(a)		
14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)		
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

Most recent update to Title 14A: TRANSMITTAL 1989-2 (supplement July 17, 1989)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

TRANSPORTATION—TITLE 16

16:1A-1.3	Filing of rulemaking petitions	21 N.J.R. 2233(b)	R.1989 d.525	21 N.J.R. 3312(a)
16:5	Right-of-way acquisitions	21 N.J.R. 2713(a)		
16:21A	Bridge Rehabilitation and Improvement Bond Act rules	21 N.J.R. 2716(a)		
16:23	Public hearings and route location approval	21 N.J.R. 2913(a)		
16:25-1.1, 1.7, 2.2, 7A, 13	Installation of fiber optic cable along limited access highways	21 N.J.R. 2234(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:26-1, 2, 3	Bureau of Electrical Engineering: release of traffic signal information; drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 1653(b)	R.1989 d.458	21 N.J.R. 2804(a)
16:28A-1.7, 1.10, 1.21, 1.34, 1.41, 1.57, 1.61, 1.85, 1.93, 1.110	Restricted parking and stopping along U.S. 9, Route 20, U.S. 30, Routes 49 and 77, U.S. 206, U.S. 9W, Route 161, U.S. 322, and Route 91	21 N.J.R. 3256(a)		
16:30-3.6	Cars-only shoulder lanes along U.S. 1 in West Windsor	Emergency (expires 11-21-89)	R.1989 d.535	21 N.J.R. 3317(a)
16:30-10.10	Mid-block crosswalk on Route 15 in Lafayette Township	21 N.J.R. 3258(a)		
16:33	Repeal (see 16:45)	21 N.J.R. 1972(c)	R.1989 d.505	21 N.J.R. 3020(b)
16:41-2.2, 2.3, 2.4, 7.1, 7.2, 7.3	Highway access driveways and intersections: permit and application fees	21 N.J.R. 3063(a)		
16:41A-1.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.15, 3.19, 3.20, 4.2, 4.4, 5.2, 5.4, 6.1, 6.4, 7.1	Outdoor Advertising Tax Act rules	21 N.J.R. 2237(a)	R.1989 d.531	21 N.J.R. 3312(b)
16:44-1.1	Contract administration: prequalification committee	21 N.J.R. 2240(a)	R.1989 d.530	21 N.J.R. 3314(a)
16:44-5.5	Contract administration: verification of bid calculations	21 N.J.R. 2239(a)	R.1989 d.529	21 N.J.R. 3314(b)
16:45	Construction control: contractor claims; substantial completion	21 N.J.R. 1972(c)	R.1989 d.505	21 N.J.R. 3020(b)
16:46-1, 2	Drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 2468(a)	R.1989 d.549	21 N.J.R. 3476(b)
16:50	Railroad transportation hearings	21 N.J.R. 3258(b)		
16:52	Provision of transportation services to elderly and handicapped	21 N.J.R. 3258(b)		
16:53-3.40, 6.11	Autobus specifications: rear view video cameras	21 N.J.R. 3259(a)		
16:53D-1.1	Zone of rate freedom: 1990 percentage maximums	21 N.J.R. 2914(a)		
16:77-1	Use or occupancy of NJ TRANSIT-owned property	21 N.J.R. 3259(b)		
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)	R.1989 d.462	21 N.J.R. 2804(b)
	Most recent update to Title 16: TRANSMITTAL 1989-8 (supplement August 21, 1989)			
TREASURY-GENERAL—TITLE 17				
17:2	Public Employees' Retirement System	21 N.J.R. 2429(a)		
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)	R.1989 d.516	21 N.J.R. 3176(b)
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)	R.1989 d.515	21 N.J.R. 3176(c)
17:9-2.6, 2.7	State Health Benefits Program: effective date of coverage	21 N.J.R. 1503(a)	R.1989 d.469	21 N.J.R. 2807(a)
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:12	Purchase Bureau rules	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:13 (12A:10-1)	Goods and services contracts for small businesses, urban development enterprises and micro businesses	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:14 (12A:10-2)	Minority and female subcontractor participation in State construction contracts	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:16-17.3	Common Pension Fund A: investment limitations	21 N.J.R. 1821(b)	R.1989 d.466	21 N.J.R. 2808(a)
17:16-17.3	Investment limitations: administrative correction	———	———	21 N.J.R. 3556(a)
17:16-46, 47, 48, 49	State Investment Council: Common Pension Fund D; international diversification; currency exchange contracts	21 N.J.R. 3262(a)		
17:19-1,2	Classification of bidders on State projects	21 N.J.R. 3265(a)		
17:19-3.2	Debarment from State public works contracting	21 N.J.R. 3272(a)		
17:19-10	Consultant selection procedures for State project assignments	21 N.J.R. 3074(a)		
	Most recent update to Title 17: TRANSMITTAL 1989-7 (supplement August 21, 1989)			
TREASURY-TAXATION—TITLE 18				
18:7-8.10	Corporation Business Tax: administrative correction concerning airline revenues	———	———	21 N.J.R. 3477(a)
18:7-11.3	Corporation Business Tax: effect of deficiency notice	21 N.J.R. 3079(a)		
18:7-11.8, 13.3, 13.8	Corporation Business Tax: refund procedures	21 N.J.R. 1503(b)	R.1989 d.508	21 N.J.R. 3177(a)
18:24-1.4, 12.5	Sales and Use Tax: receipts	21 N.J.R. 1107(a)		
18:26-2.12	Transfer Inheritance and Estate Tax: renunciation or disclaimer	21 N.J.R. 1822(a)		
	Most recent update to Title 18: TRANSMITTAL 1989-5 (supplement August 21, 1989)			
TITLE 19—OTHER AGENCIES				
19:3-1.1–1.4, 1.6	Hackensack Meadowlands District: subdivision, zoning and permit fees	21 N.J.R. 2949(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:4-6.24, 6.25	Hackensack Meadowlands District: penalties, entry and inspection	21 N.J.R. 2949(a)		
19:8-1.12	Garden State Parkway: transportation of hazardous materials	21 N.J.R. 1974(a)	R.1989 d.484	21 N.J.R. 3021(a)
19:8-8.1	Garden State Parkway: special permits for oversize vehicles	21 N.J.R. 1974(b)	R.1989 d.483	21 N.J.R. 3021(c)
19:8-12	Garden State Parkway: petitions for rules	21 N.J.R. 1975(a)	R.1989 d.482	21 N.J.R. 3021(b)
19:9-1.9	Turnpike Authority: "out-of-service" signs on school buses	21 N.J.R. 3272(b)		
19:9-6	Turnpike Authority: petitions for rules	21 N.J.R. 2440(a)		
19:10-6.1	PERC: rulemaking petitions	21 N.J.R. 1505(a)	R.1989 d.461	21 N.J.R. 2808(b)
19:20-2	Sports and Exposition Authority: use of facilities	21 N.J.R. 887(b)		
19:25-10.8	Reporting requirements of continuing political committees	21 N.J.R. 3273(a)		
19:25-15.28	Public financing of general election for Governor: administrative correction	———	———	21 N.J.R. 3179(a)
19:25-15.29	Coordinated expenditures in general election for Governor	21 N.J.R. 2673(a)	R.1989 d.545	21 N.J.R. 3477(b)
19:61-3.2	Executive Commission on Ethical Standards: subpoena for witnesses	21 N.J.R. 1507(b)	R.1989 d.521	21 N.J.R. 3179(b)
19:61-3.2, 5.5	Subpoena for witnesses; rulemaking petitions: extension of comment period	21 N.J.R. 2441(b)		
19:61-5.5	Rulemaking petitions	21 N.J.R. 1508(a)	R.1989 d.520	21 N.J.R. 3179(c)

Most recent update to Title 19: TRANSMITTAL 1989-7 (supplement August 21, 1989)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40	Commission operations and procedures	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8	Receipt and processing of applications	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:41-10	Professional practice (recodify to 19:40-5)	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:42-8.1	Hearings on rules	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:45-1.1, 1.9, 1.9A, 1.15	Transportation expense reimbursement to patrons	21 N.J.R. 2953(a)		
19:45-1.1, 1.25	Slot machine payoffs by casino check; special slot tokens	21 N.J.R. 2954(a)		
19:45-1.3	Section 99 submissions	21 N.J.R. 1506(a)	R.1989 d.457	21 N.J.R. 2808(c)
19:45-1.12	Gaming supervision	21 N.J.R. 3080(a)		
19:47-2.6, 2.9	Insurance wagers in blackjack	21 N.J.R. 2441(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.5	Employment of minority and female workers	21 N.J.R. 1823(a)	R.1989 d.528	21 N.J.R. 3314(c)

Most recent update to Title 19K: TRANSMITTAL 1989-7 (supplement August 21, 1989)

Common and preferred stock investment limitations: administrative correction to N.J.A.C. 17:16-17.3 ..... 3556(a)
TREASURY-TAXATION
Corporation Business Tax: administrative correction to N.J.A.C. 18:7-8.10 ..... 3477(a)
ELECTION LAW ENFORCEMENT COMMISSION
Coordinated expenditures in general election for Governor ..... 3477(b)

PUBLIC NOTICES

PERSONNEL
Failure to appoint from complete certification: agency response to petition to amend N.J.A.C. 4A:10-2.2 ..... 3557(a)
ENVIRONMENTAL PROTECTION
Atlantic County water quality management: Hammonton . 3557(b)
Stationary source ozone pollution control: public workshops regarding State Implementation Plan (SIP) ... 3557(c)
Treatment Works Approval Annual Report and Fee Schedule ..... 3557(d)
Atlantic County water quality management: Township of Weymouth ..... 3558(a)
Upper Delaware water quality management: Knowlton Township ..... 3559(a)
Ocean County water quality management: Stafford Township ..... 3559(b)
Tri-County water quality management: Township of Franklin ..... 3559(c)
NJPDES fee assessments: agency response to public comments ..... 3559(d)
HUMAN SERVICES
Developmental Disabilities Council: public forums on 1990 Report on Services and Programs ..... 3564(a)
LABOR
1990 dollar equivalents in lieu of wages for board and room, meals and lodging ..... 3564(b)
LAW AND PUBLIC SAFETY
Medical Examiners: petition for rules concerning surgical assistants practice ..... 3565(a)
Home improvement practices: agency response to petition to amend N.J.A.C. 13:45A-16 concerning electrical contractors and master plumbers ..... 3565(b)
Practice of optometry: petition for rulemaking ..... 3565(c)
TREASURY-GENERAL
Architect-engineer selection for major projects ..... 3566(a)
HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
Petition to rezone site in Little Ferry ..... 3566(b)
Petition to rezone site in Carlstadt ..... 3566(c)
PUBLIC EMPLOYMENT RELATIONS COMMISSION
Interest arbitration: petition to amend N.J.A.C. 19:16-5.7 . 3567(a)

EXECUTIVE ORDER NO. 66(1978)
EXPIRATION DATES 3568

INDEX OF RULE PROPOSALS AND ADOPTIONS 3573

Filing Deadlines

December 4 issue:
Adoptions ..... November 8
December 18 issue:
Proposals ..... November 16
Adoptions ..... November 27
January 2, 1990 issue:
Proposals ..... December 1
Adoptions ..... December 8
January 16 issue:
Proposals ..... December 14
Adoptions ..... December 21

NOTES

OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

(Subscription rates effective November 1, 1989)

NEW JERSEY ADMINISTRATIVE CODE

☐ **FULL SET (INCLUDES ALL TITLES BELOW)** $1500

INDIVIDUAL TITLES (CIRCLE TITLES DESIRED)*

1.	Administrative Law	$ 65
2.	Agriculture	$ 65
3.	Banking	$ 65
4A.	Personnel (formerly Civil Service)	$ 65
5.	Community Affairs (two volumes)	$130
5A.	Military and Veterans' Affairs	$ 65
6.	Education (two volumes)	$130
7.	Environmental Protection (five volumes)	$325
8.	Health (four volumes)	$260
9.	Higher Education	$ 65
10.	Human Services (four volumes)	$260
10A.	Corrections	$ 65
11.	Insurance	$ 65
12.	Labor (two volumes)	$130
12A.	Commerce, Energy and Economic Development	$ 65
13.	Law and Public Safety (four volumes)	$260
	Volume C (Alcoholic Beverage Control and Amusement Games Rules) only	$ 65
14/14A.	Public Utilities/Energy	$ 65
15.	State	$ 65
15A.	Public Advocate	$ 65
16.	Transportation (two volumes)	$130
17.	Treasury-General	$ 65
18.	Treasury-Taxation (two volumes)	$130
19.	Other Agencies: Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes)	$130
19K.	Casino Control Commission	$ 65

(Prices are in U.S. dollars and include first year of updated replacement pages.)

New Jersey Register (one year, 24 issues)

By second class mail, $90 ☐

By first class mail, $180 ☐

NEW JERSEY ADMINISTRATIVE REPORTS

I. Full Set of NJAR. Eleven hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported ..... $400 ☐

II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices ..... $200/year ☐

III. Individual Hardbound Volumes (1-11) can be purchased separately. Each volume has a table of contents ..... $45/volume (specify volume or volumes desired) ☐

Prepayment is required for all subscriptions.

Please return form with your payment to:

OAL Publications
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

*If you want multiple copies of a Title, please specify on the "Amount Enclosed" line. Example: $130 (two copies, Title 1).

Name and Delivery Address:

_____

_____

_____

Billing Address, if different:

_____

_____

_____

Telephone Number _____

Amount Enclosed _____

10/89